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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 62

NORTHERN NATURAL GAS COMPANY,
APPELLANT,

vs.

STATE CORPORATION COMMISSION OF THE
STATE OF KANSAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

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[fol. 1] [File endorsement omitted]

IN THE

SUPREME COURT OF THE STATE OF KANSAS

No. 42,127

NORTHERN NATURAL GAS COMPANY, a Corporation,
Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

APPEAL FROM THE DISTRICT COURT OF FINNEY COUNTY, KANSAS
HONORABLE ROLAND H. TATE, JUDGE

Abstract of Record of Appellant, Northern Natural Gas Company—Filed August 25, 1960

Lawrence I. Shaw, F. Vinson Roach, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska,

Ray H. Calihan, Logan N. Green, Daniel R. Hopkins, Ray H. Calihan, Jr., 118 West Pine Street, Garden City, Kansas,

Mark H. Adams, Charles E. Jones, William I. Robinson, J. Ashford Manka, Clifford L. Malone, Mark H. Adams, II, John S. Seeber, Floyd E. Jensen, 202 Board of Trade Bldg., Wichita, 2, Kansas,

Attorneys for Appellant, Northern Natural Gas Company.

* * * * * * *

[fol. 5] These proceedings relate to the regulation and proration of gas production in the Kansas Hugoton Gas Field initiated under "Basic Proration Order for the Hugoton Gas Field" promulgated by The State Corporation Commission of the State of Kansas March 21, 1944. * * *

* * * * * * *

[fol. 29] Under date of November 12, 1959, said Commission issued its Order initiating a hearing for the adoption of a rule to require purchasing companies to take gas ratably from all wells to which they are connected in the same common source of supply, which order was as follows:

[fol. 30]

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. 34,780-C
(C-1825)

Conservation Division

In the Matter of the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas.

ORDER—November 12, 1959

Now on this 12th day of November, 1959, the above-entitled matter comes before the Commission for consideration on its own motion, and the Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners) finds:

1. That G.S. 1949, 55-703, as amended, imposes the following duty on this Commission:

> "The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation. * * *"

2. Evidence presented to the Commission indicates that some companies have been and are producing certain wells at higher rates than other wells in the same common source of supply; that this disparity in rates of production has resulted in the accumulation of sizable underages by many wells while others are producing their current allowables; that such situation, if permitted to continue, would violate

correlative rights, and the statutory provision above set forth.

3. That in effectuating its stautory duty in the premises, an investigation should be instituted and a public [fol. 31] hearing held thereon for the purpose of considering the adoption of a Rule to require that companies take gas ratably from all wells in the same common source of supply to which they are connected.

4. That a public hearing should be held on said investigation at the Lassen Hotel, Wichita, Kansas, on Thursday, December 17, 1959.

It Is, Therefore, by the Commission Ordered: That an investigation be and it is hereby instituted herein for the purpose of considering the adoption of a Rule to require companies to take gas ratably from all wells to which they are connected in the same common source of supply.

It Is Further by the Commission Ordered: That a public hearing be held on said investigation at the Lassen Hotel, Wichita, Kansas, on Thursday, December 17, 1959, starting at 9:00 a.m.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

By the Commission It Is So Ordered.

Wiles, Chm.; Beatty, Com.; Byrd, Com.

Raymond B. Harvey, Secretary.

(Seal)

[fol. 32]

TRANSCRIPT OF HEARING BEFORE COMMISSION, DECEMBER 17, 1959, IN DOCKET NO. 34,780-C (C-1825)

APPEARANCES

Northern Natural Gas Company, Republic Natural Gas Company, Cities Service Oil Company, Colorado Interstate Gas Corporation, Northern Pump Company, W. L. Hartman, Southwest Kansas Royalty Owners Association, Cities Service Gas Company, Sinclair Oil and Gas Company, Panhandle Eastern Pipe Line Company, Skelly Oil Company, Western Natural Gas Company, Kansas Power and Light Company, Kansas-Colorado Utilities, Inc., Pan American Petroleum Corporation.

Commission appeared by its Counsel.

STATEMENT AND MOTION BY MR. J. ROBERT WILSON (GENERAL COUNSEL FOR THE STATE CORPORATION COMMISSION)

Chairman Wiles: Mr. Wilson, does the staff have a statement to make in reference to this docket?

Mr. Wilson: We do. This matter was set down on the Commission's own motion. Therefore, I feel it is the duty of the staff to make some sort of statement as to how this matter arose. The reason for this matter being set down was a docket which the Commission heard, Docket No. [fol. 33] 60,740-C, in the matter of Northern Natural Gas Company to show cause. We took a considerable amount of evidence in this matter, and, as a result, entered an order in this docket ordering Northern to take ratably from all the wells to which they were connected in the Hugoton Field.

Northern, in their petition for rehearing to the Commission, made the allegation that the Commission was discriminating against Northern for making requirements of Northern that weren't made of other gas companies. Well, it was the position of the Commission staff, and the Commission accepted our recommendation, that we didn't want anybody to feel that they were being discriminated against, and that what was good enough for Northern Natural was good enough for all of the other gas companies.

Since all of the background material for this proceeding is in this Docket No. 60,740-C, I would like to move that the evidence in Docket No. 60,740-C be incorporated in this docket. There may be a few individuals here or companies who did not have an opportunity to cross-examine with regard to the evidence that was introduced in this docket. However, many of the companies did take an active part in this proceeding and I am certain, from the extensive cross-examination, that almost any question that could have been asked on cross-examination of any of the witnesses in this proceeding was asked. Therefore, I feel that the Commission should relax its prior rulings in some cases that evidence from other dockets not be incorporated, and I ask [fol. 34] that the testimony and the exhibits in Docket No. 60,740-C be incorporated in this proceeding.

After discussion the testimony and exhibits in Docket No. 60,740-C were ordered incorporated in and made a part of this record.

* * * * * * *

[fol. 83]

CONTINUATION OF PROCEEDING BEFORE COMMISSION, DECEMBER 17, 1959, IN ITS DOCKET 34,780-C

Commissioner Beatty stated that the Commission's purpose in the proceeding "is to arrive at some kind of a rule and, in doing that, our primary duty is to determine what are our duties under the statute and what rule or regulation will best carry out those duties. It may be that some of the parties want to put on experts to give us the benefits of their knowledge of the situation or advise us of certain facts of which we should be apprised in making up these rules but, for the most part, it appears to be now that this [fol. 84] hearing would be principally a matter of law, a matter of policy which could be handled by statements of counsel, briefs, and perhaps some testimony by experts in those areas where you think the Commission needs guidance."

Mr. Stucky, Attorney for Southwest Kansas Royalty Owners' Association stated his observation of the proceedings:

"Now, it seems to me that you can look at this in various steps. The notice of this hearing has reference to ratable taking as to the wells to which a particular purchasing company is connected. It's sort of like pipe line proration. You are considering whether or not you should require each company to prorate its total gas supply equally among the wells to which it is connected."

Mr. Poe (Attorney for Colorado Interstate Gas Company): That is the ratable taking order, and that is what I am talking about. I don't see how any rule that we adopt now, after that hearing has been concluded on facts and laws that existed at the time of that hearing, could have any effect upon the factual situation in that case. It would be almost *ex post facto.*

Mr. Wilson: No, our order (October 7, 1959) governed Northern only as to its future actions, and this rule would have the effect only in the future, Mr. Poe. There is no question of *ex post facto.*

Mr. Poe: Your order to Northern was based upon a state of conditions as they existed certainly at the time you tried the case.

[fol. 85] Mr. Wilson: But we told Northern only what to do as to the future. We didn't tell them as to the past.

Thereupon the Commission directed its staff to prepare and submit a proposed ratable take rule to all parties of record by January 1, 1960, and that all parties of record who suggest changes in such proposal or have a suggested proposal of their own shall then transmit them to the Commission by January 15, 1960.

Thereupon the hearing was continued to January 21, 1960.

TRANSCRIPT OF HEARING IN COMMISSION DOCKET
DOCKET NUMBER 34,780-C—January 21, 1960

Appearances were the same as in the prior hearing in this Docket on December 17, 1959, with the following additional parties appearing by their respective attorneys:

Superior Oil Company,
Plateau Natural Gas Company,
Sunray Mid-Continent Oil Company,
J. M. Huber Corporation,
Atlantic Refining Company,
Hugoton Production Company,
Columbian Fuel Corporation,
Mobil Oil Company, Inc.

Testimony of LESTER WILKONSON (Witness for Commission).

Direct examination.

By J. Robert Wilson:

I am a consulting petroleum engineer residing at Wichita, Kansas. I am familiar with staff's proposals for new [fol. 86] ratable take numbered Rule 82-2-219. These proposals have been marked Exhibits numbered 1 and 2. I have also prepared some computations in this matter, which computation has been marked as Exhibit 3. The identified Exhibits 1 and 2 are as follows:

EXHIBIT 1

Proposal 1

82-2-219

In each common source of supply subject to proration by this Commission from which the allowed production is not being taken by any purchaser within the limits prescribed in the basic proration order for any such common source of supply, then in that event gas shall be taken by such purchaser or purchasers as follows:

1. Gas shall be taken in proportion to the allowable from all wells to which connected in the same common source of supply.

2. The proportion of gas to be run from each well shall be determined by dividing the total runs for a proration period by the total current allowable for the same period. The resulting factor shall be applied to the current allowable for each well to establish its proportionate share of the gas being taken.

3. No well may over produce its cumulative proportionate share allowable for more than four consecutive months. Any well which has over produced its cumulative proportionate share allowable four consecutive months shall be shut in at least one month or as much longer as [fol. 87] is necessary to bring its cumulative status into balance with cumulative proportionate share allowable.

4. In applying the provision of this rule, wells not capable of making their allowable shall not be considered.

5. Any purchaser subject to the provision of this rule shall each month provide the Conservation Division with a production schedule showing status of all wells to which connected related to runs, actual allowables and proportionate share allowables.

EXHIBIT 2

Proposal II

82-2-219

In each common source of supply subject to proration by this Commission, each purchaser shall take gas in proportion to the allowable from all the wells to which it is connected. In the event any wells connected to the same purchaser in the same common source of supply are produced at rates which are not in proportion to the allowables to the extent that the difference in their production status determined by dividing the net allowable by the basic allowable varies by more than one, then the well or wells from which the greater proportional takes have been

produced shall be shut in until the difference is reduced to the above tolerance; provided however, no well shall be shut in for difference in proportion of takes when the difference results from the inability of a well to produce proportionately with other wells connected to the purchaser. [fol. 88] I have been at a loss to determine when a rule of this type would become effective in a pool and how to make it work along the flexible limits of a Basic Proration Order. If wells are out of balance when such a new rule went into effect there should be a balance set up whereby you come back to that balance and then from that point on you would more or less produce ratably. I think this is one of the deficiencies in staff proposal number 1.

Exhibit number 2 is drawn to accomplish the same purpose as Exhibit number 1. It has the defect that it does not allow the purchasing company as much flexibility as proposal number 1. I am not in a position to say what flexibility is necessary.

Cross examination.

By Mr. Ralph R. Brock (Attorney for Northern Pump Company and W. L. Hartman):

Staff proposal Exhibit 1 is not intended to balance the production of wells in the same common source of supply regardless of which pipe line they are connected to. It merely proposes pipe line proration.

Cross examination.

By Mr. Lewis R. Poe (Attorney for Colorado Interstate Gas Company):

We endeavor in the preparation of staff proposals Exhibits 1 and 2 to write them so that they would not infringe upon anything which was in the Basic Proration Order already written. With respect to wells that are incapable of producing allowables fixed during the winter months, but are capable of overproducing the allowables fixed for summertime production, the proposals may be too restric-

tive. It could be that we would want a twelve month flex-
[fol. 89] ibility instead of a four month flexibility.

Q. You are not basing it then on just the evidence that has been introduced in this particular procedure?

A. Well, no. I think that can happen in any pool where you have more than one purchaser.

Commissioner Byrd: Mr. Wilkonson, isn't it more apt to happen in pools where you have a variation in the contracts for the purchase of gas? The number of purchasers doesn't necessarily affect the situation, does it, but it's where you have a purchaser that has one kind of a contract with one producer and another kind of a contract with other producers in the same common source of supply. Isn't that correct?

The Witness: Well, if the contract was the reason that caused him not to produce his wells ratably, then that would be the case. If he chose to for some reason just favor one group of wells over another, that would be the same thing.

Cross examination.

By Mr. Mark H. Adams (Attorney for Northern Natural Gas Company):

Staff proposal number 1, Exhibit number 1, relates to purchasers rather than to producers. Where the word "taken" is used in proposal number 1, such word was meant to be synonymous with the word "purchased". I believe there should be some clause added to proposal number 1 which would correct the status of over and underproduction as between wells so that the gas will be taken ratably; that we should determine each well's current cumulative status to start from.

Q. Your proposal, Mr. Wilkonson, does not take into account, in any way, does it, contractual arrangements [fol. 90] which exist in the Hugoton Field in particular or possibly in any other field, for the taking of gas disproportionately.

A. We did not consider contracts or anything of that nature when we tried to write this order.

Cross examination.

By Mr. C. C. Linley (Attorney for Panhandle Eastern Pipe Line Company):

Staff's proposal Exhibit 1 was intended not to go into effect at all unless a well or wells connected to a pipe line system would exceed the underproduced or overproduced limits of the applicable Basic Proration Order for the pool involved.

Staff proposal Exhibit number 2 is different in that it would constitute a restriction upon the flexibility provisions of the applicable Basic Proration Order. It would constitute a further restriction within a restriction or "an order within an order". It would be a further restriction on the flexibility of operations of a pipe line purchaser as to the individual wells connected to its system within the restrictons already placed upon its operations in the Basic Order. Purchasers would still be allowed to overproduce or underproduce the total group of wells connected to its pipe line to the same limits as allowed in the Basic Order.

Testimony of R. T. Widney (In behalf of Cities Service Oil Company).

Direct examination.

By Alfred Holl:

I am employed by Cities Service Oil Company as Superintendent of Gas Production. Where there is more than one pipe line purchaser of gas from a common source of supply, at times one pipe line will take more gas than [fol. 91] another, which does provide unratableness in purchases between pipe lines. When this occurs the individual wells should be kept ratably connected to one pipe line.

Cross examination.

By Mr. Adams:

Q. Mr. Widney, your company is a producer of gas in the Hugoton Gas Field in Kansas, is that correct?

A. That is correct.

Q. Now, it has a sales contract under which Northern Natural Gas Company is the purchaser of the gas that you produce in the Hugoton Field, is that correct?

A. That is correct.

Q. That is the contract that was referred to in the hearing before the Commission in Docket No 60,740-C in the hearing held July 24, 1959?

A. Subject to checking, yes, sir.

Q. Now, that contract, or any other gas sales contracts that you have with companies that transport and sell gas in interstate commerce, is filed with the Federal Power Commission, isn't that correct?

A. As I understand it, they are; yes, sir, in interstate commerce.

Q. Yes, and your company secured a certificate of public convenience and necessity from the Federal Power Commission giving authority to produce and sell gas under such contracts?

A. I presume they have.

Q. You say you presume. Is there anybody here with your company that knows whether or not that is a fact?

Mr. Holl: If the Commission please, he can answer it if he likes, but that appears to me to be somewhat immaterial to the call of this hearing and certainly not proper cross-examination of this witness.

[fol. 92]

Mr. Adams: Well, if the Commission please, the Commission permitted the transcript of testimony and exhibits in Docket No. 60,740-C before this Commission to be made a part of this record at the last hearing in this particular docket and this matter was gone into partially in the earlier hearing in Docket No. 60,740-C and my question merely supplements the testimony that related to the gas sales contract that was referred to in that docket, and I think it's proper cross-examination, if you want to call it that.

Mr. Holl: As I recall from that docket number, we were willing to stipulate that such a contract was in existence and, if Mr. Adams wants to make that a point, that it has been approved by the Federal Power Commission, I can't

answer that definitely either, but I assume it has. We are willing to stipulate to that.

Testimony of W. L. Arvenshire (Witness for Panhandle Eastern Pipe Line Company).

Direct examination.

By Mr. C. C. Linley:

I am a petroleum engineer with ten years experience as such. I am employed by Panhandle Eastern Pipe Line Company as staff engineer in its Production and Supply Division. It is apparent from the record that the sole reason for the proposal of the order here involved is for the Commission to bolster the Commission's position in the case against Northern Natural Gas Company, which arises from circumstances applying only to that company.
[fol. 93] I would like to strongly recommend that no such order be adopted.

Mr. Jones (Mr. Richard Jones, Attorney for Republic Natural Gas Company): If the Commission please, I would like to reaffirm the views which I expressed earlier in response to Commissioner Beatty's question. It is our position that no rule is necessary, that the Commission has adequate authority under the statute and the rules as they exist to accomplish the task of assuring equitable taking and ratable taking. If the Commission does conclude that its authority or its exercise of that authority is not sufficiently spelled out in the rules as they exist, we would like to have an opportunity to submit a form of general rule to supply such a deficiency, if the Commission finds that it does exist, and we would be glad to do it upon request. In other words, we wouldn't want a general rule to be adopted without an opportunity to submit a form of rule.

Chairman Wiles: All right. Is there anything further to come into this record? (No response.) This record will remain open until the first day of February. In the interim, if anybody has any proposals they would like to submit, they may do so. At that time, it will be closed.

If you have any briefs or any statements or any proposals, whatever you may wish to submit to the Commission, you may do so between now and the first day of February.

Thereafter on or about the 27th day of January, 1960, Republic Natural Gas Company through its attorney Richard Jones filed with the Commission its recommended [fol. 94] form of order, a true copy of which is attached hereto as Appendix 3.

Thereafter under date of February 3, 1960, said Commission entered its order based on said hearing which order, without formal parts is as follows:

ORDER—February 3, 1960

Now on this 3rd day of February, 1960, the above-entitled matter comes on for consideration and determination by the State Corporation Commission, hereinafter referred to as the Commission. The Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners) having heard the evidence and examined the files and records, and thereby being fully advised in the premises, finds:

1. That on November 12, 1959, the Commission, upon its own motion, ordered an investigation and hearing for the purpose of considering the adoption of a rule to require that companies take gas ratably from all wells in the same common source of supply to which they are connected. That notice of the time and place of said investigation and hearing was published on December 5, 1959, in the Topeka Daily Capital, and that a copy of such notice was mailed to all interested parties. Pursuant to notice, a public hearing was held on December 17, 1959, at the Lassen Hotel, Wichita, Kansas. Appearances were as follows:

Lewis M. Poe and Stuart Carter, representing Colorado Interstate Gas Company;

Stuart R. Carter, representing Sinclair Oil and Gas Company;

[fol. 95] Alfred O. Holl and P. K. Smith, representing Cities Service Oil Company;

Ralph R. Brock, representing Northern Pump Company; and W. L. Hartman;
Richard Jones, representing Republic Natural Gas Company;
Milo M. Unruh, representing Kansas-Colorado Utilities, Inc.;
Norton Standaven and Charles Lindberg, representing Pan-American Petroleum Corporation;
O. R. Stites, representing Cities Service Gas Company;
Jeff A. Robertson and C. C. Linley, representing Panhandle Eastern Pipe Line Company;
A. E. Kramer and Dale Stucky, representing Southwest Kansas Royalty Owners Association;
George W. Selinger, representing Skelly Oil Company;
Mark H. Adams, Mark H. Adams, II, and Jack C. Osborne, representing Northern Natural Gas Company;
W. P. Wesley, representing Western Natural Gas Company;
J. L. Higday, representing Kansas Power and Light Company;
J. Robert Wilson and John Townsend, representing the Commission.

The hearing was adjourned for the purpose of receiving and disseminating proposals, until January 21, 1960, at which time the hearing reconvened. Appearances in addition to those entered at the hearing of December 17, 1959, were as follows:

[fol. 96] Stanford Smith, representing Cities Service Oil Company;
Homer Penn, representing Republic Natural Gas Company;
Richard Jones, representing Superior Oil Company, a California corporation;
Milo M. Unruh, representing Plateau Natural Gas Company;
Richard Jones and William R. Loar, representing Sunray Mid-Continent Oil Company;

Ferd Evans, representing J. M. Huber Corporation;
Donald Mitchell, representing Atlantic Refining Company;
Daniel R. Hopkins, representing Hugoton Production Company;
W. P. Wesley, representing Columbian Fuel Corporation; and
Charles Lindberg, representing Mobil Oil Company, a division of Socony-Mobil Oil Company, Inc.

2. That G.S. 1949, 55,703, as amended, imposes the following duty on this Commission:

> "The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation. * * *"

3. That for the purpose of facilitating such regulation, and thereby accomplishing the duty contemplated by the statute, it is necessary that the Commission promulgate and adopt a rule requiring all companies to take natural gas ratably from all wells within the same common source of supply to which they are connected.

[fol. 97] 4. That the Commission's staff and other parties have submitted proposals at the hearings, and subsequent thereto, which have been considered by the Commission.

5. That Exhibit "A", designated as Rule 82-2-219, meets the mandate of the statute and will enable the Commission to regulate production of natural gas in such a manner as to require companies to produce ratably from all wells within the same common source of supply to which they are connected; and that the Commission's General Rules and Regulations for the Conservation of Crude Oil and Natural Gas should be amended by adopting the proposed Rule as contained in Exhibit "A", and that said proposal should be designated Rule 82-2-219.

6. That Rule 82-2-219 is of statewide application and should therefore be filed with the Revisor of Statutes on

February 8, 1960. This order and Rules 82-2-219, which is attached hereto as Exhibit "A" and made a part hereof, should be served upon all parties affected by this rule by first class United States mail. Further notice should be given by publishing this order including Rule 82-2-219 in the official state paper, on February 8, 1960, and this rule shall become effective on February 8, 1960.

It Is, Therefore, by the Commission Ordered: That Rule 82-2-219 be, and it is hereby, added to the Commission's General Rules and Regulations for the Conservation of Crude Oil and Natural Gas; and this order and Rule 82-2-219 be filed with the Revisor of Statutes on February 8, 1960, and shall also be in full force and effect on February 8, 1960.

[fol. 98] And It Is Further Ordered: That this order and said rule, duly certified, be served upon all parties to be affected by first class United States mail and that further notice be given by publishing this order including Rule 82-2-219 in the Official State Paper, on February 8, 1960.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

By the Commission It Is So Ordered.

Wiles, Chm.; Beatty, Com.; Byrd, Com.

EXHIBIT "A" TO ORDER

Rule 82-2-219

Ratable Production of Gas from Common Source of Supply

In each common source of supply under proration by this Commission, each purchaser shall take gas in proportion to the allowables from all the wells to which it is connected and shall maintain all such wells in substantially the same proportionate status as to overproduction or underproduction; provided, however, this rule shall not apply when a difference in proportionate status results

from the inability of a well to produce proportionately with other wells connected to the purchaser (Authorized by G.S. 1959, Supp. 55-703; Effective February 8, 1960).

[fol. 99]

PETITION FOR REHEARING OF NORTHERN NATURAL GAS COMPANY—Filed February 9, 1960

* * * * * * *

Comes Now Northern Natural Gas Company, a corporation, petitioner, and hereby petitions this Commission for an order setting aside and granting a rehearing in the above captioned proceeding with respect to Commission's "Order" and "Rule 82-2-219" dated February 3, 1960, and effective February 8, 1960, shows:

1. That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein engaged generally in the business of purchasing natural gas for transportation by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota; that in such operation, and as an integral part thereof, petitioner has, among other things, entered into about 125 contracts with certain producers in Finney County, Kansas, and other Kansas counties within the confines of the Kansas Hugoton Gas Feld, which contracts are presently subsist-[fol. 100] ing and have subsisted during all times material herein, for the purchase of natural gas produced in and from said field, and under which contracts (a) the recoverable gas under the lease acreage covered by said contracts was and is dedicated to be sold to Northern Natural Gas Company, and (b) express provisions are included in all such contracts which prescribe a certain method of apportionment amongst all such producers of Northern's requirements for gas from the said field; that petitioner is a natural gas company as defined in the Natural Gas Act, as amended (15 U.S.C.A. 717, *et seq.*),

and is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for domestic, commercial, industrial and other uses. That such sales of natural gas are sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and as such are subject to the provisions of said Natural Gas Act and to the jurisdiction of the Federal Power Commission thereunder. Northern does not own, in whole or in part, a well capable of producing oil or gas or both in commercial quantities, and consequently it is not a producer in Kansas, as that term is defined in General Rules and Regulations for the conservation of crude oil and natural gas, issued by the State Corporation Commission of the State of Kansas. Its wholly owned subsidiary, Northern Natural Gas Producing Company, is such a producer. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Gas Field and con- [fol. 101] tract rights with respect thereto being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale in interstate commerce for resale.

2. That said "Order" and "Rule 82-2-219" are unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void, in that:

(a) The findings therein are contrary to the evidence, are not supported by any competent evidence and are wholly unauthorized, unfounded and unwarranted, either under the evidence or under the Statutes of Kansas, relating to "production and conservation of natural gas" Section 55-701 *et seq.*, G.S. of Kansas, 1949, as amended.

(b) They are contrary to and in direct conflict with said Commission's Basic Proration Order, as amended, for the Kansas Hugoton Gas Field promulgated and adopted by said Commission March 21, 1944, in Docket C-164 initially effective March 31, 1944.

(c) They are arbitrary, capricious and discriminatory as to petitioner, are an unreasonable abuse of administrative authority on the part of the Commission, and are contrary to and beyond the scope of powers granted the Commission by any statute.

(d) They purport to amend said Commission's Basic Proration Order for the Hugoton Gas Field in a proceeding not noticed to any party as being a proceeding for the amendment of said Basic Proration Order, all in violation of the due process clause of the Constitution of the United States.

[fol. 102] (e) They are so vague and indefinite as to what they purport to establish as "ratable taking" or "ratable production" as to be impossible of reasonable interpretation or proper administration; it is impossible from reading the "Order" and "Rule" to determine if they are directed toward an objective of "ratable purchasing" or toward "ratable production." They are the making of a rule as the occasion arises, which certainly is not a guide for anyone; they amount to rule by man rather than rule by law and are lacking in due process of law.

(f) They purport to strike down and amend the express provisions in all of petitioner's gas purchase contracts in the Kansas Hugoton Gas Field by which all producers selling gas to petitioner have agreed to the apportionment of Northern's gas requirements amongst them, thereby (a) casting an unlawful burden upon, impairing and impeding the interstate operations of petitioner in the purchase, transportation and sale in interstate commerce of natural gas for resale taken by petitioner from said Kansas Hugoton Gas Field in violation of the commerce clause of the United States, (b) in impairment of and contrary to the exclusive jurisdiction of the Federal Power Commission under the subsisting provisions of the Natural Gas Act, 15 U.S.C.A. 717, et seq., and (c) in impairment of the obligations of such gas purchase contracts in viola-

tion of Section 10 of Article I of the Constitution of the United States.

(g) They destroy and take petitioner's contract and property rights without compensation, and abridge petitioner's privileges and immunities in contra-
[fol. 103] vention and in violation of Sec. 17, Art. 2 of the Constitution of the State of Kansas, and the Fourteenth Amendment to the Constitution of the United States.

(h) Unless rehearing is granted herein as prayed for, petitioner shall assume that it is the meaning and intent of Commission's "Order" and "Rule 82-2-219" that the provisions of all of petitioner's gas purchase contracts in the Kansas Hugoton Gas Field which provide for a method of purchases and receipts of gas which in operative effect is contrary to or vary from such "Order" and "Rule 82-2-219", are invalid and void as against public policy, including any such provisions which require purchases and receipts of gas at rates and in amounts greater than required by such "Order" and "Rule 82-2-219", as well as any such provisions which permit purchases and receipts of gas at rates and in amounts less than required by such "Order" and "Rule 82-2-219".

Wherefore, and by reason of the foregoing, petitioner prays that its Petition for Rehearing be granted and that upon such rehearing said "Order" and "Rule 82-2-219" be set aside and appropriate order entered in accordance with the evidence presented and the applicable law.

* * * * * * *

[fol. 104]

ORDER DENYING PETITION FOR REHEARING—
February 18, 1960

Now on this 18th day of February, 1960, the above-entitled matter comes before the Commission for further consideration on the petition for rehearing filed herein February

9, 1960, by Northern Natural Gas Company with respect to the Commission order issued herein dated February 3, 1960. The Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners) having re-examined its files and records herein, and being advised in the premises, finds:

1. That the Commission order above-referred to issued herein on February 3, 1960, was a valid exercise of its authority under G.S. 1949, Chapter 55, Article 7, as amended.

2. That the petition for rehearing filed herein presents no new matter for Commission consideration; that said petition for rehearing is without merit and should be denied.

It Is, Therefore, by the Commission Ordered: That the petition for rehearing filed herein by Northern Natural Gas Company be and it is hereby denied.

By the Commission It Is So Ordered.

Wiles, Chm.; Beatty, Com.; Byrd, Com.

[fol. 105]

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

PETITION FOR JUDICIAL REVIEW—Filed February 19, 1960

Case No. 10788

Comes Now the Petitioner, Northern Natural Gas Company, and for its petition for judicial review herein against the action of the above named Respondent, alleges and shows to the Court as follows:

1. That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein engaged generally in the business of purchasing natural gas for transportation by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota; that in such operation, and as an integral part thereof, petitioner has, among other

things, entered into about 125 contracts with certain producers in Finney County, Kansas, and other Kansas counties within the confines of the Kansas Hugoton Gas Field, which contracts are presently subsisting and have subsisted during all times material herein, for the purchase of natural gas produced in and from said field, and under which contracts (a) the recoverable gas under the lease acreage covered by said contracts was and is dedicated to be sold to Northern Natural Gas Company, and (b) express provisions are included in all such contracts which prescribe a certain method of apportionment amongst all such producers of Northern's requirements for gas from the said field; that petitioner is a natural gas company as [fol. 106] defined in the Natural Gas Act, as amended (15 U.S.C.A. 717, *et seq.*) and is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for domestic, commercial, industrial and other uses. That such sales of natural gas are sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and as such are subject to the provisions of said Natural Gas Act and to the jurisdiction of the Federal Power Commission thereunder. Northern does not own, in whole or in part, a well capable of producing oil or gas or both in commercial quantities, and consequently it is not a producer in Kansas, as that term is defined in General Rules and Regulations for the conservation of crude oil and natural gas, issued by the State Corporation Commission of the State of Kansas. Its wholly owned subsidiary, Northern Natural Gas Producing Company, is such a producer. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Gas Field and contract rights with respect thereto being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale in interstate commerce for resale.

2. That Respondent, the State Corporation Commission of the State of Kansas, is an administrative body,

created by legislative enactment, with its principal place of business and post office address at State Office Building, Topeka, Kansas, but the Conservation Division thereof [fol. 107] having its place of business and address at 500 Insurance Building, Wichita, Kansas; that Harry G. Wiles is Chairman of said Commission and Marion Beatty and Richard C. Byrd are members of said Commission.

3. That this is an action under G.S. 1949, 55-707, for a judicial review of proceedings before the State Corporation Commission of the State of Kansas in its Docket No. 34,780-C (C-1825) wherein it issued its "Order" dated February 3, and effective February 8, 1960, and its "Rule 82-2-219". That a full and complete transscript of the proceedings had in said docket, together with all exhibits therein introduced and attached thereto, is being filed in this court and are made a part hereof to the same extent as though set out verbatim. That a copy of said "Order" dated February 3, 1960, and effective February 8, 1960, and of said "Rule 82-2-219" is marked Exhibit "A", attached hereto and made a part hereof. That upon issuance of said "Order" dated February 3, 1960, and effective February 8, 1960, and of said "Rule 82-2-219", petitioner timely filed with Respondent a Petition for Rehearing, a true copy of which, without proof of service, is marked Exhibit "B" attached hereto and made a part hereof. That on February 18, 1960, said Petition for Rehearing was denied by Commission Order, a true copy of which is attached hereto as Exhibit "C" and made a part hereof.

4. That said "Order" dated February 3, 1960, and effective February 8, 1960, and said "Rule 82-2-219" promulgated thereby are unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void for each, [fol. 108] every and all of the reasons set forth in Petitioner's Petition for Rehearing, Exhibit "B" attached hereto.

5. That such "Order" and "Rule 82-2-219" promulgated thereby are so vague, indefinite and uncertain as to leave unanswered necessary questions pertaining to its applica-

bility and effect upon provisions in Petitioner's gas purchase contracts in the Kansas Hugoton Gas Field which might provide for a method of purchases and receipts of gas at rates and in amounts which, in operative effect, may be contrary to or vary from "ratable taking" as determined by the Commission, including any such provisions which purport to require purchases and receipt of gas at rates and in amounts greater than required by such "ratable taking" as well as any such provisions which purport to permit purchases and receipt of gas at rates and in amounts less than required by such "ratable taking".

6. That for all the reasons hereinabove stated and alleged, Petitioner respectfully asks said Court at this time to grant a stay of execution of the "Order" dated February 3, 1960, and effective February 8, 1960, and "Rule 82-2-219" promulgated thereby.

Wherefore, Petitioner prays:

(a) That this Court grant instanter a stay of execution of enforcement of the "Order" dated February 3, 1960, and effective February 8, 1960, and "Rule 82-2-219" promulgated thereby;

(b) That this Court enter judgment herein setting aside said "Order" dated February 3, 1960, and effective [fol. 109] February 8, 1960, and "Rule 82-2-219" for the reasons that they are unreasonable, arbitrary, unlawful, beyond the jurisdiction of the Commission and void; and

(c) That Petitioner be granted all other relief to which Petitioner may be entitled hereunder.

The exhibits attached to and made a part of such Judicial Review Petition are heretofore shown in the Abstract of Record as follows:

Exhibit A—Commission's Order of February 3, 1960, at Ab. pp. 14-17.

Exhibit B—Copy of Northern Natural Gas Company's Petition for Rehearing at Ab. pp. 18-21.

Exhibit C—Copy of Commission's Order denying said Petition for Rehearing at Ab. pp. 21-22.

• • • • • • • •

JOURNAL ENTRY OF JUDGMENT—April 8, 1960

Case No. 10788

Now on this 8th day of April, 1960, there comes on for consideration and determination by the Court the petition of Northern Natural Gas Company for judicial review of the State Corporation Commission's Rule 82-2-219, entitled [fol. 110] "Ratable Production of Gas From a Common Source of Supply", promulgated on February 8th, 1960, and the February 8th, 1960 Order of said State Corporation Commission promulgating said rule. The petitioner appears by its attorneys of record, and the respondent, State Corporation Commission, appears by its attorneys of record.

Whereupon, the Court, having examined the files and records herein, and having he d the arguments of counsel on March 15, 1960, finds that the said rule and order of the State Corporation Commission are lawful, valid and reasonable, and should be affirmed.

It Is, Therefore, by the Court Considered, Adjudged and Ordered: That the State Corporation Commission's Rule 82-2-219, entitled "Ratable Production of Gas from a Common Source of Supply", promulgated on February 8, 1960, and the February 8, 1960 Order of said State Corporation Commission promulgating said rule are affirmed.

By the Court, Roland H. Tate, Judge.

MOTION FOR NEW TRIAL—Filed April 11, 1960

Comes now Northern Natural Gas Company and moves the court for an order vacating the judgment previously [fol. 111] entered herein and granting a new trial in the above entitled cause for the following reasons:

1. Because of abuse of discretion of the court.

2. Because of accident and surprise which ordinary prudence could not have guarded against.

3. Because this petitioner was not afforded a reasonable opportunity to present its evidence and be heard on the merits of the case.

4. Because of erroneous rulings of the court.

5. Because the judgment and decision is in whole or in part contrary to the evidence.

6. Because of newly discovered evidence which petitioner could not with reasonable diligence have discovered and produced at the trial.

7. Because the judgment and decision of the court was procured by the corruption of the party obtaining it.

By all of which the rights of the petitioner herein, Northern Natural Gas Company, were substantially affected.

ORDER OVERRULING MOTION FOR NEW TRIAL—
April 27, 1960

Now on this 27th day of April, 1960, the above entitled matter comes on for hearing on the motion of the peti- [fol. 112] tioner Northern Natural Gas Company for a new trial herein. The parties appear by their attorneys of record.

Thereupon the court considers the pleadings filed herein, hears arguments of counsel and being otherwise fully advised in the premises finds that petitioner's motion for new trial herein should be overruled.

It Is, Therefore, by the Court Considered, Ordered, Adjudged and Decreed that the motion for new trial filed herein by Petitioner Northern Natural Gas Company be and the same is hereby overruled.

Roland H. Tate, Judge.

NOTICE OF APPEAL—Filed May 6, 1960

To: The State Corporation Commission of the State of Kansas, and J. Robert Wilson, General Counsel, and S. F. Fleeker, Assistant General Counsel, its attorneys of record.

You and each of you please take notice that the above named petitioner, Northern Natural Gas Company, has appealed and does hereby appeal to the Supreme Court of the State of Kansas, from the judgment and decision, and [fol. 113] every part thereof, of the District Court of Finney County, Kansas, made herein and entered on April 8, 1960, and does further appeal to said Supreme Court from the order of said District Court, denying and overruling said petitioner's motion for new trial, made herein and entered on April 27, 1960, in said above entitled action.

SPECIFICATIONS OF ERROR

I.

The trial Court erred in its judgment affirming the Order of the State Corporation Commission dated February 3, 1960, and the Rule promulgated thereby, in that:

(a) Said Order and the Rule promulgated thereby and each of the findings of fact therein purporting to be in support thereof are unauthorized by and contrary to the valid subsisting provisions of the Statutes (particularly 55-703, G.S. 1949, as amended) dealing with the production and conservation of natural gas, the Basic Proration Order for the Kansas Hugoton Gas Field and the statewide gas conservation Rules and Regulations of the Commission.

(b) Such Order and the Rule promulgated thereby are not supported by substantial, competent relevant and material evidence, but are contrary thereto.

(c) That said Order and the Rule promulgated thereby are arbitrary, unreasonable and discriminatory, have no relationship to proration or conservation of gas, burden interstate commerce, and take appellant's

[fol. 114] property and contract rights in property, all in violation of the Federal Constitution, namely the Commerce Clause (Clause Three, Section Eight of Article I) the Contract Clause (Clause One, Section Ten of Article I) and the provisions of the Fourteenth Amendment thereto and the Kansas Bill of Rights, Sections 1, 2 and 18 and Section 17, Article II of the Kansas Constitution.

(d) Said Order and the Rule promulgated thereby, together with the Statutes upon which the same are based as construed to authorize such Order and Rule, under the evidence as applied to appellant, violate the provisions of the Natural Gas Act (15 U.S.C.A. 717 *et seq.*) and invade the jurisdiction of the Federal Power Commission thereunder.

[fol. 169]

Appendix III.

Republic Natural Gas Company's Letter to Commission—January 27, 1960

The Honorable Harry C. Wiles
Chairman
Kansas State Corporation Commission
State House
Topeka, Kansas

Re: Docket No. 34,780-C (C-1825)
In the Matter of the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas.

Dear Sir:

At the close of the hearing in the subject docket, the Commission announced that the docket would remain open until February 1, 1960, in order to permit those who might desire to do so to submit suggestions for a "ratable take" rule to be adopted by this Commission.

This letter is written on behalf of our client, Republic Natural Gas Company. Republic Natural Gas Company adheres to its expressed vi w that the General Statutes of Kansas and the rules adopted by this Commission for the purpose of carrying out the directions of the statutes are sufficient as they presently exist and do not require the adoption of any rule pertaining to the ratable taking of natural gas.

However, in the event the Commission feels that some further statement or expression is necessary, we suggest [fol. 170] that a rule in the following form would be appropriate:

> Each purchaser of gas connected to wells in a common source of supply subject to proration by the Commission is required to take ratably in accordance with the allowable factors established by the Commission and is required to maintain all of the prorated wells connected to its facilities in the same common source of supply in substantially the same percentage status as to overproduction and underproduction.

We believe that a rule in the above form could be adopted without creating the obvious problems which would result from any more stringent or specific rule.

Yours very truly,

Hershberger, Patterson, Jones & Thompson

/s/ Richard Jones

RJ:rj

cc. All counsel of record.

[fol. 171] Acknowledgment of Service of Appellant's Abstract of Record and Waiver of Proof Thereof (omitted in printing).

[fol. 172] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,127

NORTHERN NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

Appeal from the District Court of Finney County, Kansas

Honorable Ronald H. Tate, Judge

COUNTER ABSTRACT OF THE APPELLEE—Filed September 26, 1960

State Corporation Commission of the State of Kansas, J. Robert Wilson, General Counsel, S. F. Fleeker, Assistant General Counsel.

[fol. 173] The Appellee, for its counter abstract to the abstract filed by the Appellant herein, respectfully calls the Court's attention to the following additional testimony and evidence:

Hearing Before the State Corporation Commission on December 17, 1959, in the Commission's Docket No. 34,780-C (C-1825)

Chairman Wiles: Shall we come to order, please? Gentlemen, the Commission has directed the staff to submit a proposal to all parties of record by January 1, 1960. All parties of record who have suggested changes in the staff's proposal or a suggested proposal of their own shall then have them in the Commission's hands by January 15, 1960. Any suggested changes or substitute proposals are to be [fol. 174] served on all parties of record by the proposing party by January 15, 1960. In other words, if you have proposals to send to the Commission, also serve them on

all other parties of record at the same time. The docket will then be continued to January 21, 1960, for further hearing.

Hearing Before the State Corporation Commission on July 24, 1959, in the Commission's Docket No. 60,740-C (C-7216)

TESTIMONY OF REX D. FOWLER

Cross examination.

By Mr. Richard Jones, Attorney for Republic Natural Gas Company:

"Q. . . . Is it physically possible to have produced the allowable as fixed by the Commission?

"A. From the Republic 'A' wells?

"Q. No, from all of your connections in the Kansas Hugoton Field?

"A. All of the wells connected to our system in the Kansas Hugoton Field with possibly a minor exception or two are physically capable of producing the allowables that have been assigned, yes,"

Northern Natural Gas Company's requirements for gas from the Kansas Hugoton Field dropped sharply sometime in 1958. However, Northern Natural had not lost any markets at that time. Our markets have increased rather than decreased and that did not represent a sharp drop in our over-all demand for gas in the system. Our demand for gas in the Omaha District has also substantially increased in the past few years.

TESTIMONY OF R. T. WIDNEY

Direct examination.

By Mr. Alfred Holl, Attorney for City Service Oil Company:

Exhibit No. 10 shows the cumulative net allowable assigned to wells in the field. In January of 1959, Cities [fol. 175] Service Oil Company's wells had a January Current Allowable of 2,084,874 Mcf. They had an underage of 11,411,727 Mcf. 123,711 Mcf of underages for Cities Service Oil Company's wells were cancelled in January,

1959, by reason of being underproduced in excess of six times the January current allowable. The Republic Natural Gas Company ("A" Group) has a January current allowable of 2,674,390 Mcf, and an overage of 114,858 Mcf. They were overproduced 4.29 percent in that particular month. Northern Natural Gas Company's other connections had a January current allowable of 9,309,441 Mcf, with a total underage of 48,604,070 Mcf. The net status of that group of wells was 522.09 percent underproduced. They had 409,393 Mcf cancelled. Northern Natural Gas Company had a total January current allowable of 14,068,705 Mcf, and underage of 59,900,939; ratable net status per January current allowable, 425.77 percent. In comparing that we see that Northern Natural Gas Company, excluding Cities Service Oil Company and Republic "A" connections, had 522.09 (percent underproduction); Republic Natural Gas Company (Group "A"), -4.29; and with the Cities Service Oil Company's connections, 547.36 percent. To have everything ratable here, each one of these figures should be around 425.77 percent underproduced.

Although we have not included on this schedule the May ratability figures, for Cities Service Oil Company it is 595.28 percent. For the Republic Natural Gas Company ("A" Group) it is 8.61 percent. That was just a little under a month. Northern Natural Gas Company group, excluding Cities Service Oil Company and Republic "A" connections 575.07; and the total for the Northern Natural Gas Company would have been 471.89 percent.

Current production to me would mean in the neighborhood of two or three months. I disagree with Mr. Fowler's testimony that four or five years might be current.

[fol. 176] I have expressed an opinion that there is drainage occurring. Our studies indicate that if the wells are produced with the same percent of allowable production or of net allowable production, then the wells will be ratable, and correlative rights will be protected. There are two ways of accomplishing this currently in the Hugoton Field. One is to raise the total (of) Northern Natural's takes up until they are ratable with the Republic "A" group, and second would be to lower Republic "A" by curtailing their production, so they will become ratable with the balance of the field.

If this is not done, further injury will be incurred by the latter part of 1961. Currently the correlative rights are being damaged in a great amount. The underages are being cancelled each month out there, which will not give the wells, unless they are reinstated, a chance to make up their allowable. They should be allowed to become ratable. If this situation continues over the next two and a half years, it will result in an intensification of damage to correlative rights.

TESTIMONY OF LESTER WILKONSON

Direct examination.

By Mr. Ferd Evans, Attorney for Northern Pump Company:

These cancellations (of allowables) result from Northern's failure to take the gas it is permitted to take.

Hearing Before the State Corporation Commission on January 21, 1960, in the Commission's Docket No. 34,780-C (C-1825)

Chairman Wiles: Gentlemen, shall we come to order? You will remember in the hearing last month the Commission's staff was directed to submit its proposals with reference to this matter to all interested parties. Any interested parties then had a given time to submit any changes which [fol. 177] they think should be made or any proposals of their own. The staff has submitted two different proposals. I am going to ask Mr. Wilson, our General Counsel, to proceed at this time.

TESTIMONY OF LESTER WILKONSON

Direct examination.

By Mr. J. Robert Wilson, Commission's General Counsel:

"Q. Will you state your name and address please?
"A. Lester Wilkonson, Wichita, Kansas.
"Q. What is your occupation?
"A. Consulting Petroleum Engineer."

Mr. Wilson: Does anyone here question Mr. Wilkonson's qualifications to testify in this matter?

(No response.)

Chairman Wiles: The qualifications will be admitted.

I believe that the purpose of the rule was to require that gas be taken ratably between the wells to which a purchaser was connected. This we have tried to state. We needed a starting place for people interested in the takes from the various gas pools to finally arrive at a state-wide rule. We didn't feel, in writing it, that we were doing a final job. There are many considerations which I think ultimately will have to be gone into in a rule of this type. Probably the greatest virtue of the order itself is the fact that we were able to start some place and give others a starting place for a final rule of this nature.

In writing proposal No. 1, our purpose was to get something out which would be a starting and get other people's views, and we might finally arrive at an order which would be a good one. The staff would like to hear testimony from various parties as to what flexibility is necessary. The staff has reached no definite position and their thinking is still very fluid on this matter.

[fol. 178] It is my opinion, as one who is familiar with operations in the Hugoton Field, that such an order or rule as suggested here is necessary at this time in the Hugoton Field. My opinion is based on the fact that wells connected to the same pipeline are widely out of balance with one another.

Certificate of Counsel to Record (omitted in printing).

[fol. 179] Acknowledgment of Service of Counter Abstract of the Appellee (omitted in printing).

[fol. 180]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,127

NORTHERN NATURAL GAS COMPANY, Appellant,

v.

STATE CORPORATION COMMISSION, Appellee.

Syllabus by the Court

GAS—*Order of Corporation Commission—Requiring Ratable Taking by All Purchasing Companies.* Pursuant to the provisions of G. S. 1949, 55-703, as amended, the State Corporation Commission has power to issue an order promulgating a rule to regulate the production of natural gas in such a manner as to require all gas purchasing companies to take natural gas ratably from all wells within the same common source of supply to which each is connected.

Appeal from Finney district court; Roland H. Tate, judge. Opinion filed June 10, 1961. Affirmed.

Mark H. Adams, II, of Wichita, argued the cause, and *Mark H. Adams, Charles E. Jones, William I. Robinson, J. Ashford Manka, Clifford L. Malone, John S. Seeber* and *Floyd E. Jensen*, all of Wichita, and *Laurence I. Shaw, F. Vinson Roach* and *Patrick J. McCarthy*, all of Omaha, Nebraska, and *Ray H. Calihan, Logan N. Green, Daniel R. Hopkins* and *Ray H. Calihan, Jr.*, all of Garden City, were with him on the briefs for the appellant.

Charles C. McCarter, General Counsel, argued the cause, and *S. F. Fleeker*, Assistant General Counsel, was with him on the briefs for the appellee.

OPINION—Filed June 10, 1961

The opinion of the court was delivered by

SCHROEDER, J.: This is a judicial review action to determine the validity of a State Corporation Commission order

and rule directed to gas purchasers, rather than gas producers, requiring them to purchase ratably from all wells within the common source of supply to which each purchaser is connected.

The petition for judicial review was filed on February 19, 1960, by Northern Natural Gas Company (hereafter referred to as Northern or appellant) in the district court of Finney County, Kansas. Thereafter, on the 8th day of April, 1960, the district court having heard argument of counsel entered its judgment confirming the Commission's order of February 3, 1960, and the Commission's promulgation of Rule 82-2-219 thereby. The lower court found the rule and order of the State Corporation Commission to be lawful, valid and reasonable.

After the trial court overruled Northern's motion for a new trial, appeal was duly perfected to this court.

In a companion case, *Northern Natural Gas Co.* v. *State* [fol. 181] *Corporation Commission*, 188 Kan. ——, —— P. 2d ——, No. 42,128, decided this date, Northern was directed by the State Corporation Commission to show cause why it should not take ratably from the wells to which it was connected in the Hugoton Field in Kansas. As a result of proceedings therein Northern was directed by an order of the Commission "to take gas ratably from its connections in the Kansas Hugoton Gas Field." As a part of such order the Commission retained jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders and promulgating and implementing such further rules and regulations as from time to time it deemed proper.

In Northern's petition for rehearing before the Commission, filed November 6, 1959, Northern contended, among other things, the order directed against it was unlawful in that:

> "(d) It purports to amend said Commission's Basic Proration Order for the Hugoton Gas Field insofar only as it affects one (Northern Natural Gas Company) of the seven principal purchasers of gas therein and in a proceeding not noticed to any party as being a proceeding for the amendment of said Basic Proration

Order all in violation of the due process clause of the Constitution of the United States."

Northern's petition for rehearing in the "show cause" case was denied and judicial review proceedings concerning the Commission's order dated October 7, 1959, were filed in the district court of Finney County, Kansas, now on appeal in the Supreme Court as Case No. 42,128, heretofore noted as the companion case.

The Commission, in apparent recognition of Northern's objection heretofore quoted, sought to bolster its position in the case against Northern, which arose from circumstances applying only to that company, and on November 12, 1959, on its own motion ordered an investigation and hearing for the purpose of considering the adoption of a rule to require that companies take gas ratably from all wells in the same common source of supply to which they are connected. In issuing such order the Commission found:

"1. That G. S. 1949, 55-703, as amended, imposes the following duty on this Commission:

"'The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation. . . .'

"2. Evidence presented to the Commission indicates that some companies have been and are producing certain wells at higher rates than other wells in the same common source of supply; that this disparity in rates [fol. 182] of production has resulted in the accumulation of sizeable underages by many wells while others are producing their current allowables; that such situation, if permitted to continue, would violate correlative rights, and the statutory provisions above set forth.

"3. That in effectuating its statutory duty in the premises, an investigation should be instituted and a public hearing held thereon for the purpose of considering the adoption of a Rule to require that com-

panies take gas ratably from all wells in the same common source of supply to which they are connected."

Pursuant to such findings the Commission ordered:

"... That an investigation be and it is hereby instituted herein for the purpose of considering the adoption of a Rule to require companies to take gas ratably from all wells to which they are connected in the same common source of supply."

Notice was duly published on December 5, 1959, in the Topeka Daily Capital and a copy of such notice was mailed to all interested parties. Pursuant thereto a hearing was conducted in which the interested parties entered an appearance to present evidence and arguments on the matter.

The Commission, recognizing that it was prompted to conduct the instant proceedings by its docket in the matter of Northern to show cause (Docket No. 60,740-C), in which considerable evidence was taken, ordered the testimony and exhibits in Docket No. 60,740-C incorporated and made a part of the record. Therefore, the facts upon which the rule was promulgated in the instant case are in all material respects identical and present the same issues as the companion "show cause" case.

As a result of the hearing the Commission found pursuant to its duty under G. S. 1949, 55-703, as amended, that it was necessary to promulgate and adopt a rule requiring all companies to take natural gas ratably from all wells within the same common source of supply to which each is connected, and by its order dated February 3, 1960, adopted Rule 82-2-219, which reads:

"Ratable Production of Gas from Common Source of Supply.

"In each common source of supply under proration by this Commission, each purchaser shall take gas in proportion to the allowables from all the wells to which it is connected and shall maintain all such wells in substantially the same proportionate status as to overproduction or underproduction; provided, however,

this rule shall not apply when a difference in proportionate status results from the inability of a well to produce proportionately with other wells connected to the purchaser (Authorized by G. S. 1959, Supp. 55-703; Effective February 8, 1960)."

[fol. 183] In promulgating such rule the Commission found it met the mandate of the statute and enabled the Commission "to regulate production of natural gas in such a manner as to require companies to produce ratably from all wells within the same common source of supply to which they are connected."

The Commission's general rules and regulations for the conservation of crude oil and natural gas were amended by adding Rule 82-2-219, and the Commission directed that its order and rule be filed with the Revisor of Statutes on February 8, 1960, at which date it was to be published and become official.

The contentions of the appellant are presented in its brief by what it denominates "Questions Involved." They are as follows:

"I.

"Said order and the rule promulgated thereby, approved by the trial court, and each of the findings of fact therein purporting to be in support thereof are not supported by substantial, competent, relevant evidence, and are unauthorized by and contrary to the Kansas Statutes dealing with the production and conservation of natural gas, the basic proration order for the Kansas Hugoton Gas Field and Commission's statewide gas conservation rules and regulations.

"II.

"Said order and the rule promulgated thereby as approved by the trial court are arbitrary, unreasonable and discriminatory, have no relation to proration or conservation of gas, burden interstate commerce and take appellant's property and contract rights all in violation of the Commerce Clause, the Contract Clause

and the Fourteenth Amendment to the Federal Constitution, and the Kansas Bill of Rights, Sections One, Two and Eighteen, and Section Seventeen, Article Two of the Kansas Constitution.

"III.

"Said order and the rule promulgated thereby as approved by the Court under the evidence as applied to appellant violates the provisions of the Natural Gas Act (15 USCA, 717 et seq) and invades the jurisdiction of the Federal Power Commission thereunder."

The foregoing contentions are identical with those advanced by Northern in the companion "show cause" case, No. 42,128, where they have been considered and answered by the court, upholding the power of the Kansas Corporation Commission to regulate the production of natural gas in such a manner as to require Northern to take gas ratably from all gas wells in the Kansas Hugoton Gas Field to which its lines were connected.

It follows that if the Commission has authority pursuant to G. S. 1949, 55-703, as amended, (now G. S. 1959 Supp., [fol. 184] 55-703) to lawfully issue such order with respect to one company, *a fortiori*, the Commission may lawfully promulgate and adopt a rule requiring all gas purchasing companies to take natural gas ratably from all wells within the same common source of supply to which each is connected.

We therefore hold Rule No. 82-2-219 and the order promulgating it are valid and lawfully adopted pursuant to the power conferred upon the State Corporation Commission by the provisions of G. S. 1949, 55-703, as amended.

The judgment of the lower court is affirmed.

SCHROEDER, J., dissents.

[fol. 185] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,127

NORTHERN NATURAL GAS COMPANY, a corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

Appeal from the District Court of Finney County, Kansas.

Honorable Roland H. Tate, Judge

NORTHERN NATURAL GAS COMPANY'S MOTION FOR REHEARING—Filed June 30, 1961

Appellant, Northern Natural Gas Company, after a careful review and consideration of this Court's opinion, decision and judgment entered in the above captioned appeal, does hereby respectfully move this Honorable Court to set aside its said opinion, decision and judgment, entered and filed herein on June 10, 1961, to grant appellant a rehearing thereof and upon such rehearing or otherwise to set aside the purported ratable take order directed at appellant, and modify its judgment herein by construing G.S. 1949, 55-703, as amended by the legislature in 1959, as exclusively a statute relating to the production of gas and not to the purchase thereof, so that such construction by this Court will not result in a conflict with or impinge upon or invade the jurisdiction of the Federal Power Commission under the provisions of the Natural Gas Act, 15 U.S.C.A. 717, thereby [fol. 186] avoiding the consequences resulting from any attempt by the State of Kansas to regulate in any manner sales of gas in interstate commerce for resale and natural gas companies, parties to such sales. This is a companion case to the case of Northern Natural Gas Co. v. State Corporation Commission, 188 Kan. ——, —— P. 2d ——, No. 42,128, decided by this Honorable Court on June 10, 1961,

in which case appellant has filed motion for rehearing. Since the Court in this case, No. 42,127, states " • • • , the facts upon which the rule was promulgated in the instant case are in all material respects identical and present the same issues as the companion 'show cause' case," and since appellant desires to advance the same reason for its motion for rehearing in each of these companion cases there is attached hereto marked Exhibit "1", made a part hereof and incorporated herein, copy of appellant's motion for rehearing in Case No. 42,128.

For each and all of the reasons and based upon the authorities set forth in the foregoing motion and exhibit thereto, appellant respectfully requests the Court to set aside its decision of June 10, 1961, in captioned appeal, to grant appellant a rehearing thereof and upon such rehearing or otherwise to set aside as invalid the Commission's order and rule.

Respectfully submitted,

Mark H. Adams, Charles E. Jones, William I. Robinson, J. Ashford Manka, Clifford L. Malone, Mark H. Adams, II, John S. Seeber, Floyd E. Jensen, Wichita 2, Kansas; Lawrence I. Shaw, F. Vinson Roach, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska; Ray H. Calihan, Logan N. Green, Daniel R. Hopkins, Ray H. Calihan, Jr., 118 West Pine Street, Garden City, Kansas, Attorneys for Appellant, Northern Natural Gas Company.

[fol. 199] Acknowledgment of Receipt of Appellant's Motion for Rehearing and Waiver of Formal Proof of Service Thereof (omitted in printing).

[fol. 200]

IN THE SUPREME COURT OF THE STATE OF KANSAS

Motion by appellant for Rehearing is Denied.

NORTHERN NATURAL GAS Co., Appellant,

42,127 v.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

JOURNAL ENTRY OF ORDER DENYING MOTION FOR REHEARING—September 19, 1961

[fol. 201]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,127

NORTHERN NATURAL GAS COMPANY, a corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—November 17, 1961

I.

Notice is hereby given that Northern Natural Gas Company, a Corporation, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Kansas, the highest court of such state, affirming the judgment of the District Court of Finney County, Kansas, upholding and sustaining the validity of an order and accompanying rule

issued by the Corporation Commission of the State of Kansas directing each purchaser of natural gas in each common source of supply under proration in Kansas to take gas in proportion to the allowables from all the wells to which it is connected, which judgment was entered in this action on the 10th day of June, 1961, and became final on the 19th day of September, 1961, by that Court's denial, [fol. 202] without opinion, of appellant's motion for rehearing.

This appeal is taken pursuant to 28 U.S.C.A. 1257(2), 62 Stat. 929.

II.

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Abstract of record as prepared and filed by appellant, including any Appendix thereto, together with the proof of service thereof;

B. Counter abstract of record as prepared and filed by appellee, including any Appendix thereto, together with the proof of service thereof;

C. Opinion, decision and judgment of the Supreme Court of Kansas entered June 10, 1961, showing that Mr. Justice Schroeder dissents;

D. Appellant's motion for rehearing as filed, together with proof of service thereof;

E. Docket entry or order of the Supreme Court of Kansas as entered September 19, 1961, denying, without opinion, appellant's motion for rehearing; and

F. This notice of appeal, together with proof of service thereof.

III.

The following Federal question is presented by this appeal:

Does the State of Kansas have jurisdiction, under the guise of regulating production and in the face of the provisions of the Natural Gas Act and Federal Power Commission regulations thereunder, to control the sale of natural gas in interstate commerce for resale after the production and gathering thereof has ended, by directing a natural gas company purchaser, operating under subsisting gas sales [fol. 203] contracts with its producers, to make its purchases in a manner or at a rate contrary to such contracts which are on file with the Federal Power Commission as effective rate schedules and on which Certificates of Public Convenience and Necessity authorizing such sales have been issued?

Dated this 17 day of November, 1961.

Mark H. Adams,* Mark H. Adams, II, Joe Rolston, 503 Colorado Derby Building, Wichita, Kansas; Lawrence I. Shaw, F. Vinson Roach, Jack C. Osborne, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska, Attorneys for Appellant, Northern Natural Gas Company.

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* Attorney upon whom service should be made.

Acknowledgment of Service (omitted in printing).

[fol. 204] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,128

NORTHERN NATURAL GAS COMPANY,
a Corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE
STATE OF KANSAS, Appellee.

APPEAL FROM THE DISTRICT COURT OF FINNEY COUNTY, KANSAS
HONORABLE ROLAND H. TATE, JUDGE

Abstract of Record of Appellant, Northern Natural Gas Company—Filed August 25, 1960

Lawrence I. Shaw, F. Vinson Roach, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska,

Ray H. Calihan, Logan N. Green, Daniel R. Hopkins, Ray H. Calihan, Jr., 118 West Pine Street, Garden City, Kansas,

Mark H. Adams, Charles E. Jones, William I. Robinson, J. Ashford Manka, Clifford L. Malone, Mark H. Adams, II, John S. Seeber, Floyd E. Jensen, 202 Board of Trade Bldg., Wichita 2, Kansas,

Attorneys for Appellant, Northern Natural Gas Company.

[fol. 4] These proceedings relate to the regulation and proration of gas production in the Kansas Hugoton Gas Field initiated under "Basic Proration Order for the Hugoton Gas Field" promulgated by The State Corporation Commission of the State of Kansas March 21, 1944, pursuant to the following notice of hearing with respect thereto:

[fol. 5]

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Docket No. C-164,

Conservation Division

In the matter of establishing rules and regulations relating to the production, sale and conservation of natural gas in the Hugoton Field of Kearny, Finney, Grant, Haskell, Morton, Stevens and Seward Counties, Kansas.

NOTICE OF HEARING

The State Corporation Commission of the State of Kansas, to: All Producers and Purchasers of Natural Gas in Said Hugoton Gas Field, and to All Royalty Owners, Land Owners and Other Persons Anywise Interested Therein, Greetings:

You and each of you, are hereby notified that the State Corporation Commission of the State of Kansas did on the 11th day of September, 1943, promulgate and enter an order setting the above matter for hearing at the Allis Hotel in the City of Wichita, State of Kansas, on the 28th day of September, 1943, at 2 o'clock p.m.

You are hereby further notified that pursuant to said order the Commission has instituted an investigation, and directed that a hearing be held at said time and place for the purpose of determining whether the Basic Order heretofore entered in the above entitled matter, on October 28, 1942, should be amended so as to more fully carry out the intent and purpose of the statutes of the State of Kansas: that at said time and place evidence will be received and interested parties will be heard in connection therewith.

[fol. 6] All parties in anywise interested or concerned shall take notice of the foregoing and govern themselves accordingly.

State Corporation Commission of the State of Kansas, By /s/ Victor L. Kirk, Secretary.

Such Basic Proration Order for the Hugoton Gas Field, as amended, in effect on October 7, 1959 (the date of State Commission Order hereinafter complained of), was as follows:

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. C-164

Conservation Division

Order No. 44-3-21

In the Matter of Establishing Rules and Regulations Relating to the Production, Sale and Conservation of Natural Gas in the Hugoton Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton, and Hamilton Counties, Kansas.

BASIC PRORATION ORDER FOR THE HUGOTON GAS FIELD
—In Effect on October 7, 1959

Now on this 21st day of March, 1944, this matter comes on for consideration and determination upon the investigation instituted by the Commission to determine whether the provisions of the Basic Order herein, as issued on October 28, 1942, should be changed, modified, or amended; [fol. 7] and the Commission, having heard the evidence at its hearing held at Wichita, Kansas, on September 28, 1943, having concluded its investigation, and being fully advised in the premises, finds that certain further additional facts have been ascertained concerning the Hugoton Gas Field and the proper method which should be used in fixing well quotas to the end that each developed lease will be enabled to currently produce its daily allowable so that ultimately such developed lease will have an opportunity to produce approximately the amount of gas which underlies such lease; that in order to properly carry out the intent of the statutes of the State of Kansas relating to the conservation of natural gas, that the Basic Proration

Order for the Hugoton Gas Field, dated October 28, 1942, should be rescinded and superseded by a new Basic Order; that in connection with such new Basic Order, and based upon the evidence before it, the Commission finds:

a. That the Hugoton Field is a common source of supply of natural gas located in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton counties, Kansas.[1] The field extends south to the Kansas-Oklahoma state line and into the Oklahoma Panhandle. The exact boundaries of the field in Kansas are not definitely established due to the lack of sufficient development. It is indicated by present development that the Kansas portion of the field is sixty-five miles long and forty miles wide. Approximately 340 commercial gas wells have been drilled in said field and over 350,000,000,000 cubic feet of gas have been withdrawn from the common reservoir. Each and all of the wells have a daily [fol. 8] open-flow in excess of 750,000 cubic feet and the total combined open-flow of all the wells is approximately 4,200,000,000 cubic feet daily. The presently developed acreage held by production totals 217,600 acres as compared with an estimated proven acreage of 1,500,000 acres. Eighteen of the wells are not connected to pipe lines and are not producing, and have not produced in the past, any gas because of this fact, although some of them were drilled as long as eight years ago. The owners of the unconnected wells have, since their respective wells were completed, generally been ready and willing to make connections and sell their gas to the pipe lines purchasing gas from said field; most of said owners of unconnected wells have been refused pipeline connections. The connected wells have produced and are producing large quantities of gas.[2]

b. That the market demand for gas produced in the Hugoton Field in Kansas is approximately 238,000,000

[1] As amended by order dated October 13, 1948.

[2] As amended by order dated October 13, 1948.

cubic feet daily and it is therefore evident that the available production of the wells is in excess of the market demand for gas produced from the common source of supply, notwithstanding that said wells are produced at not to exceed twenty-five percent of their open-flow capacities. One hundred and eighty-eight of the wells are located on 640-acre tracts while eighty-four wells are on 160-acre locations. Since 1936, practically all of the drilling has occurred upon 640-acre tracts and, insofar as present and future drilling is concerned, 640 acres appears to be the standard drilling unit. Localized drilling [fol. 9] or development has occurred in several portions of the field but it is not, however, wholly concentrated in any one particular area.

c. That gas is found in porous limestone and dolomite and is encountered at an average depth of from 2,700 to 2,800 feet below the surface. Impervious shale bodies are encountered within the producing horizons throughout the field, but it is evident that the gas producing formations are interconnected and therefore constitute one common source of supply. The thickness of the gas-producing horizons or zones varies considerably, although a sand thickness of from fifty to seventy-five feet is representative of the geological conditions existing generally throughout the field. A fair average porosity for limestone bodies such as are encountered in the Hugoton Field is 18.2 percent. The number of gas-producing horizons, as shown by the well logs or drill cuttings, varies between wells and tracts, most of them containing from three to five gas-producing zones.

d. That the virgin shut-in wellhead pressure was 435 pounds per square inch, while, at the present time, shut-in wellhead pressures have been observed as low as 371 pounds. Likewise, variations in the pressures as between wells and leases exist throughout the field. The movement of gas within a common reservoir is governed by pressure differentials; the gas migrates from the areas of higher pressure to the areas of lower pressure. In its virgin state, the pressure within a common source of supply is the same, or practically the same, at all points.

When gas is produced from a well, the pressure within [fol. 10] the reservoir is produced in the vicinity of the well bore. This causes gas in the formation to expand into the well. When a producing well is shut in, the pressure in the formation in the vicinity of the well will build up from that existing during production and this again tends to equalize the pressure within the formation and demonstrates that the continued migration of gas from high pressure to low pressure areas is occurring. Gas migrates within the reservoir from developed leases having higher pressures to other developed leases having lower pressures in accordance with the same principles which govern the movement of gas from the formation into the several well bores. If the migration or drainage of gas across property lines is not equalized by counter-drainage, the developed leases so drained will not ultimately produce approximately the amount of gas underlying them, either at the time the wells were drilled thereon or at the time this order becomes effective. The extent of the movement or drainage of gas between developed leases depends upon the magnitude of variation in pressures existing as between developed leases, the areas contained in such leases and the amounts of gas withdrawn.

e. That the evidence demonstrates that pressure differentials or gradients exist within the reservoir and between developed leases located sufficiently close to each other to cause drainage between such leases. The shut-in wellhead pressures of some of the said unconnected wells have decreased since they were originally tested, even though the said wells have not produced any gas. Since pressure is one of the measurements of the amounts of [fol. 11] gas within the reservoir, the decreases in pressure within the reservoir under leases containing wells which have produced no gas show that gas has been drained from such leases to or toward other developed leases, having pipeline connections, in greater quantities than it has moved to said leases. Therefore, uncompensated, cognizable and undue drainage has occurred within the common source of supply and between developed leases therein.

f. That since there exists disproportionate production from the wells and leases in said field which impairs the correlative rights of many of the owners of developed leases, it is necessary for the Commission to take jurisdiction and to prescribe regulations for the production of gas from said wells and others that may be hereafter completed in said field to the end that each person, firm, or corporation having the right to drill into and produce natural gas from said field may take therefrom only such proportion of the amount that may be produced therefrom without waste as will permit each well or developed lease to produce ultimately at least approximately the amount of gas underlying the land or lease on which such well is located and currently produce proportionately with the other wells in said field. That the said disproportionate production which has occurred and is occurring has caused undue, cognizable, preventable and noncompensated drainage of gas from developed properties, tracts and leases to other developed properties, tracts and leases in and throughout said field; that various developed properties have suffered undue, premature and inequitable depletion by reason of such conditions and practices, as [fol. 12] is evidenced by the differences in the shut-in well-head pressure of the various wells throughout the field. The wells which have produced the greater amounts of gas generally show the lower pressures, while the wells which have had smaller withdrawals generally show the higher pressures. Wherever this is not true, the fact that wells which have produced considerable quantities of gas, have not suffered material decreases in pressure, indicates that they have probably drained adjoining leases to a greater extent than the wells which show pressure declines. The present and past production from the wells in said field is and has been inequitable and unfair and has caused unreasonable discrimination against various developed properties, denying to many owners of developed properties the opportunity to produce currently and proportionately with the owners of other wells in said field, and denying to many owners of developed properties the opportunity to ultimately produce at least approximately the amount of gas underlying their developed tracts.

g. That one well completed in the said formation can adequately and sufficiently drain 640 acres without causing waste and considering the cost of drilling, equipping and operating one well in comparison with the estimated recovery per acre and the slow rate at which the production for said field can be ratably and nonwastefully marketed, the Commission finds that the basic acreage unit to be used in the proration formula hereinafter prescribed should be 640 acres, and that in no instance shall more than 640 acres be attributable to a well for the purpose of calculating the acreage factor except by specific order of the Commission as hereinafter provided. [fol. 13] The acreage factor of a well shall equal the number of acres held by production from said well divided by 640. Expressed in a mathematical formula, said acreage factor may be set forth as follows:

$$\text{Acreage Factor} = \frac{\text{No. of acres attributable}}{640}$$

In the event that more than one well is located on any one lease, the acreage to be used in calculating the acreage factor of each well on such lease shall be determined by dividing the total number of acres by the number of wells, and the quotient thereof shall be the acreage used in making said calculation. To be considered as attributable to a well, the acreage shall be contiguous or adjoining, with the well located as near as practicable in the center thereof, and in no event nearer than 1,250 feet from any boundary line of the unit; except, however, that this restriction shall not apply to leases or tracts which have already been unitized in compliance with previous orders issued by the Commission, or to wells now in existence and located on tracts containing less than 640 acres.

Such wells, now in existence, and located on tracts containing less than 640 acres, may be attributed acreage which is held by production from such well, if such acreage is located within a two-mile radius of the well, or upon application, and after notice and hearing, the Commission may authorize the inclusion of acreage as being attributable to a well now in existence if the acreage lies within a

three mile radius of the well and if, upon hearing, it is shown to the Commission that it is impossible or impracticable to unitize the tract upon which such well is located [fol. 14] with other acreage lying within two miles thereof: *Provided, however*, That the Commission may, either on complaint filed, or upon its own motion, after notice and hearing, exclude any acreage from inclusion in any unit which, in its judgment, is not productive and which should not be considered as proven acreage.

The term "held by production," as used in this paragraph shall mean that acreage so held participates in the production upon a royalty basis and does not receive delay rentals.

That there are located in the field certain so-called "short" sections, according to the United States Governmental Survey, and that some of such sections contain materially less than 649 acres. Wherever possible, such sections should be unitized among themselves, or with other leases or tracts, in order to form units of approximately 640 acres: *Provided, however*, That short sections located along the Kansas-Oklahoma state line shall be unitized only with the tracts immediately north thereof and the units thus formed may contain more than 640 acres.

In cases where it is impossible to create such units, the Commission may, upon proper application, authorize the unitization of such short sections containing materially less than 640 acres with other tract or tracts, and under such conditions the acreage attributable to any well or wells located upon such unit may be greater than the 640 acres hereinbefore provided. However, no such unit shall receive an acreage factor attributing more than 640 acres without an express order of the Commission, and no presumption shall arise from this order that such authoriza- [fol. 15] tion will be granted in any specific instance, and in no instance shall any unit so formed be granted more than 800 acres. It is further provided, that producers and owners of gas wells which were completed prior to January 30, 1940 (being the date upon which the first basic order of proration was issued herein), who also possess the right to produce natural gas from other lands and leases within

the limits set forth in this provision, may attribute such lands and leases, not exceeding 640 acres, to a unit for production hereunder (whether such leases are held by delay rentals or otherwise) for a term not exceeding one year from the date hereof. Within such period of one year the owner or producer of such wells shall file with the Conservation Director satisfactory evidence that the owners of the minerals have become participants in the royalty payments as otherwise hereinafter required. Any such lands which are not within said period so unitized for purposes of sharing the royalties from the wells shall henceforth be excluded as a part of any such production unit.

That there are located in the field certain so-called "long" sections, according to the United States Governmental Survey, and that such "long" sections lie along the north (correction) line of Township 26 South in Hamilton, Kearny, and Finney counties, and that such "long" sections contain materially more than 640 acres. The Commission finds that, notwithstanding anything else in this order to the contrary, the acreage permitted to be attributable to any well drilled in accordance with rules in any one of such "long" sections may exceed 640 acres but shall not exceed 900 acres, and that the acreage factor for [fol. 16] any well located in a "long" section shall be equal to the number of acres not in excess of 900 acres, attributed to such well divided by 640. Expressed in a mathematical formula, said acreage factor for such a well may be set as follows:

$$\text{Acreage Factor} = \frac{\text{No. of acres attributable}}{640}$$

In the event that more than one well is located in any of the so-called "long" sections, the acreage to be used in calculating the acreage factor of each well on such "long" section shall not exceed 640 acres. To have in excess of 640 acres considered as attributable to a well drilled on any such "long" section, only one well shall be drilled thereon in accordance with these rules, the acreage attributable shall be contiguous or adjoining and all such acre-

age attributable shall be located within the boundary lines of the "long" section on which the well is located. No acreage located without the boundary lines of such "long" section on which only one well is located shall be considered in figuring the acreage attributable to such well. The well, when only one well is to be drilled to any one "long" section, may be drilled, at the operator's discretion, at any point within the "long" section not farther than 467 feet from the center thereof; in no event shall the well be located nearer than 1,250 feet from the boundary line of the "long" section.

Any well capable of producing natural gas, in existence at the time of the adoption of this order, located in any of the subject "long" sections, shall be considered as the well for such "long" section, regardless of its location [fol. 17] within the section, and shall be entitled to have attributed thereto, when properly unitized, acreage within said section not in excess of 900 acres.[3]

h. It shall be lawful for the owners of two or more separately-owned contiguous tracts of land, or of the minerals located thereunder, by appropriate contract between such owners, to cause such lands or minerals to be consolidated as one production unit and to apportion the royalties accruing from the production of the well or wells, to be divided among them as they may agree and when such agreement shall have been made, the royalties arising from the production of the well or wells shall be allocated as the parties thereto may agree. It shall further be lawful for any operator or well owner to agree with the owners of lands or minerals to become part of a production unit and to share the royalties upon such basis as the operator and landowner or mineral owners may agree.[4]

i. That the producers in the field have been required, by custom, to lay gathering lines from their wells to the pipe lines of the purchasers. A lease is, therefore, undeveloped until a gas-producing well has been completed

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[3] As amended by orders dated April 2, 1947, and August 21, 1950.

[4] As amended by order dated January 10, 1946.

thereon and the owner or operator thereof has tendered gas to a purchaser at the purchaser's pipe line. Before a well is entitled to an allowable, the owner or operator thereof should either tender the gas for sale at the prevailing price being paid in the field to a pipeline company or others who are purchasing in the field in which such [fol. 18] a well is located, or demonstrate that he will and can produce the gas allowed such a well for lawful purposes. Such tendership may be shown by constructing a line from the well to such pipe line or other purchasing facilities or by filing with the Director of the Conservation Division an affidavit setting forth that the said producer is ready, willing and able to construct said line from the well to the facilities of the purchaser, and to sell gas to the purchaser at the prevailing price in the field, but that the purchaser refuses to buy the gas when so tendered. In the event that such purchaser seeks to controvert the fact or the terms of any such tendership, such purchaser may file a protest with the Commission setting forth the facts upon which such purchaser relies in making his protest, and the Commission shall, after due notice to all interested parties, hear the protest and determine whether or not, under all of the facts and conditions existing, that such tender should not be considered as having been properly made, and whether the well shall be entitled to an allowable as a result of such tender.

j. The adoption of a formula that will enable each well to currently produce its allowable and ultimately produce approximately the amount of gas underlying the lease upon which it is located is the object sought to be accomplished by this order. The testimony at the numerous hearings held by the Commission indicates that there are many factors which should be considered in connection with the formula, such as, acreage, pressures, open-flow, porosity and thickness of the pay. It is conceded by practically all of the witnesses that acreage is one of the most important of these factors and should be one of the [fol. 19] factors included in the formula. It is also the opinion of many of the expert witnesses that the other factors above enumerated, namely, pressures, open-flow,

porosity and thickness of pay, are all taken into consideration and given their proper weight when the deliverability of the well to put gas into a pipeline against pipeline pressure is taken into account. Therefore, a formula that considers acreage and deliverability and gives due value to both should result in the establishment of well allowables that will permit each well to currently produce its allowable and to ultimately produce approximately the amount of gas which underlies the lease upon which it is located. Since the pipeline pressures in the Hugoton Field are maintained at approximately eighty percent of the average field pressure, this fact should be taken into consideration in determining the deliverability factor. Hence, the Commission finds that the formula to be used in fixing well quotas for the Hugoton Field should include the factors of acreage and deliverability. The acreage factor shall be determined as set forth in paragraph "*g*" of this order. Deliverability shall be deemed to be the ability of said well to produce gas against eighty percent of the average field pressure.

k. The deliverability of each connected well in the Hugoton Field shall be determined as follows: The well shall be produced into the pipe line for approximately seventy-two hours, during which time the working pressure at the wellhead shall be maintained at eighty percent of the average shut-in wellhead pressure of the field, expressed in pounds per square inch gauge and designated [fol. 20] herein as the deliverability standard pressure, or as closely thereto as operating conditions in the field will permit. In no case shall the working wellhead pressure be more than ninety percent or less than seventy percent of the shut-in wellhead pressure of the well being tested unless, in the judgment of the Commission's representative, it is impractical to maintain the pressure within the above-described limits. If it is impossible or impractical to reduce the working pressure to ninety percent of the shut-in pressure, the deliverability shall be calculated by substituting ninety percent of the shut-in wellhead pressure of the well for P in the formula hereinafter set forth. Flow shall be

measured by approved meter throughout the seventy-two hour test period, and the wellhead pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of seventy-two hours shall be considered the stabilized producing rate corresponding to the working wellhead pressure existing at that time, provided such rate is not greater than the average producing rate for the entire seventy-two hour period. If the working wellhead pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in M. c. f. per day at a base temperature of sixty degrees Fahrenheit and a base pressure of two pounds above afmosphere, shall constitute the well's deliverability. If the wellhead pressure at the end of the test is either greater than or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

[fol. 21]

$$D = R \times \sqrt{\frac{P^2 - P_d^2}{P^2 - P_w^2}} \quad .85$$

where D = Deliverability.
R = Observed producing rate.
P = Shut-in pressure of the well, pounds absolute.
P_d = Deliverability standard pressure, converted to pounds absolute.
P_w = Working wellhead pressure at Rate R, pounds absolute.

The term "working wellhead pressure," as used in this paragraph, refers to pressure at the casing-head, except in cases where the casing-head is not in open communication with the producing formation because of the presence of a packer or other obstruction in the annular space between casing and tubing. In such cases, the working wellhead pressure shall be calculated by adjusting the tubing pressure for the increased effect of friction caused by flow through the tubing.

Shut-in wellhead pressure shall be measured by dead weight gauge after the well has been shut in for approximately seventy-two hours. In no case shall the well have been shut in for less than sixty-six hours nor more than seventy-eight hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, [fol. 22] the highest such shut-in pressure obtained will be used in figuring the deliverability of such well.

The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its open-flow considered in connection with the average relationship between open-flow and deliverability for all wells in the field. When such well is connected to a pipe line its deliverability shall be redetermined by the method described herein.[5]

l. To determine a well's quota for a given proration period, determine first the proration factor for the field by dividing the total field allowable for such period by the sum of the products of deliverability times the acreage factors of all the wells in the pool; then multiply the field proration factor by the product of the deliverability times acreage factor for the well. The result reached by this calculation shall constitute the well's allowable, in cubic feet, which it may produce for such proration period.

m. That the production of gas in accordance with the above formula has a reasonable relation to prevention of waste, to the prevention of inequitable and unfair production of gas from the common source of supply, and to the prevention of unreasonable discrimination in favor of one producer in said field and against another producer therein and that production of gas in such manner will in fact

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[5] As amended by order dated October 3, 1945.

accomplish the purposes for which article 7, chapter 55, General Statutes of Kansas for 1935 was enacted.

[fol. 23] *n.* That there shall be held two market demand hearings for each year. The first hearing shall cover the period from October 1 to March 31, both inclusive, and the second shall cover the period from April 1 to September 30, both inclusive. The allowable period established shall be a calendar month. The Commission shall issue its orders covering each allowable period, and such orders shall be issued on, or near, the first day of the month for which such order is issued.

o. At such time and place as the Commission shall fix, the Commission will, after notice, conduct a hearing to determine the market demand for natural gas from said field for the next six succeeding proration periods, or for such other period of time as the Commission shall prescribe, and at said hearing may determine any other questions which may properly and legally come before the Commission for consideration thereat, and a new schedule of production allowable for the wells in said field, based upon the determination made as a result of such hearing, shall be prepared and promulgated for the ensuing proration periods.

p. Operators of wells and purchasers, or others taking gas from any well, shall endeavor to limit their takes of gas to the quantities fixed in the schedule as the allowable production for such well, provided that, if, during the period covered by any schedule there should develop a substantial increase in the amount of the market demand for gas from said field, the Director may permit production to be increased ratably from all the wells in the field to meet such emergency increased demand and the facts respecting same shall be reported to the Commission at or [fol. 24] before the next periodic market demand hearing for such action thereon as may be proper. If, at the end of any proration period, there is an overage or underage in production for any well during such period, same shall be carried forward as a charge against or credit in favor of such well and subtracted from or added to, as the case may be, the allowable for such well for the next proration period. Any well with an overproduction of six times the amount

of the current allowable assigned to it for the preceding January shall be shut in by the operator or producer and not permitted to produce any gas until such overproduction has been reduced by deductions from such overproduction made by current allowables, to the extent that the well shall not be overproduced more than five times the current allowable assigned to it for the preceding January. When any connected well has accumulated underproduction in excess of six times the current allowable assigned to it for the preceding January, such excess shall thereupon be cancelled and the amount so cancelled shall be spread among all the connected wells of the field. During the calendar year 1958 all wells over or underproduced shall be brought within four times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1959 all wells over or underproduced shall be brought within six times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1960, all wells over or underproduced shall be brought within three times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1961 and each year [fol. 25] thereafter, all wells over or underproduced shall be brought down to zero sometime during the period from February 1 to July 31, inclusive. Any overproduced well which is not brought within the above tolerance sometime during each of the aforesaid periods shall be shut in until its overproduction is reduced to the above tolerances. Any underproduced well which is not brought within the above tolerance sometime during each of the aforesaid periods shall have its accumulated underage in excess of the above tolerances cancelled. (The words "six times January" "four times January" or "three times January" means six, four or three times the allowables assigned to the well for the month of January immediately preceding.) Any underages cancelled shall be spread among all of the connected wells of the field. Any underage so cancelled shall not be considered in the determining of the future production of any such well, unless, upon notice and hearing, the Commission shall otherwise determine: Provided, however, That

in no event shall any underproduction of an unconnected well be cancelled.*

q. Deliverability tests and seventy-two hour shut-in pressures of the wells in said field should be taken by or under the supervision of the engineer of the Conservation Division of the Commission, with the aid of the owner of the well, such tests to be taken annually on all wells by not later than August 14th of each year. To avoid undue discrimination, deliverability and pressure tests on all wells should be taken at approximately the same time. Prior to the testing of any well, reasonable notice shall be given to [fol. 26] owners of off-set wells stating the time at which such test will be commenced. A written report thereof, signed by the persons taking and witnessing the same and approved by the Director or his agent who took or supervised the same, shall be made and filed with the Director of the Conservation Division, forms for which shall be furnished by the Director. The acreage of each well shall be certified in writing by the owner of the well and filed with the Director. If the acreage assigned to any well should be increased or decreased at any time after the initial report thereon is made, such fact shall be promptly certified by the owner to the Director. Any operator in the field shall have the right to challenge the correctness of the acreage assigned to any well. As new wells are brought in, their respective deliverability and acreage factors, as well as pressures, shall be taken, reported and certified in like manner.

r. The Director of the Conservation Division shall prepare production schedules, in accordance with the provisions of this order, for the wells in said field and submit the same to the Commission for approval and upon the approval thereof, said schedules will take effect and be promulgated, and the Director shall promptly furnish to each producer and purchaser in said field a copy thereof and a copy of the order of the Commission promulgating the same and they shall govern themselves accordingly in the subsequent operation of said wells.

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* As amended by order dated July 15, 1959.

s. All wells shall be equipped with meters of an approved type and the amount of gas produced from each well shall be accurately measured: *Provided*, That where more than one well is situated on a lease, a meter for each [fol. 27] well is not required if, upon application and proper showing, the Commission finds that all the gas produced from the wells may be accurately measured so as to determine whether production is ratable and without unreasonable discrimination.

t. To avoid the drilling of unnecessary wells and to prevent waste, no well hereafter drilled in said common source of supply shall be assigned an allowable unless the Commission after due notice and hearing, shall find that under all the circumstances appearing, undue or uncompensated drainage of gas is occurring beneath the tract on which such well is located or that there is an actual need for additional wells to furnish gas to fulfill the market demands for gas from said field.

u. That this order should constitute the Basic Order for the proration of production in said field on and after March 31, 1944, and until amended, changed, or modified by further order of the Commission.

It Is, Therefore, by the Commission Ordered: That the Basic Order heretofore entered herein dated October 24, 1942, be and the same is hereby rescinded; that this order shall constitute and is hereby designated as the Basic Order for the proration of production of gas from the Hugoton Gas Field; that the production of natural gas from said field be, and the same is hereby regulated and restricted in conformance with the findings hereinabove made and in compliance with the formula, rules, regulations and other matters therein contained.

It Is Further Ordered: That this order shall take effect and be in force from and after the 31st day of March, [fol. 28] 1944, and shall remain in force and effect until amended, changed or modified by the further order of the Commission.

It Is Further Ordered: That the Commission hereby retains continuing jurisdiction of the subject matter hereof and of the parties hereto for the purpose of issuing from

time to time such further order, amendments, additional orders, rules and regulations as may be necessary and proper in the premises.

By the Commission It Is Ordered.

(Seal)

Pursuant to Paragraph (n) of such Basic Proration Order, two market demand hearings for each year were and are held by such Commission and market demand orders are issued for sixth-month periods (October 1 to March 31, and April 1 to September 30), in addition to which monthly proration or allowable orders are issued for each month spreading and allocating the market demand and fixing the monthly allowables assigned to each of the producing gas wells in said field.

That under date of May 27, 1959, said Commission issued a Show Cause Order against Northern Natural Gas Company, which order was as follows:

[fol. 29]

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. 60,740-C (C-7216)

Conservation Division

In the Matter of Northern Natural Gas Company to Show Cause.

ORDER TO SHOW CAUSE—May 27, 1959

Now on this 27th day of May, 1959, the Commission (Marion Beatty, Chairman, Harry G. Wiles and Richard C. Byrd, Commissioners) on its own motion, instituted an investigation in the premises hereinafter stated, and having examined its files and records, finds:

1. That Northern Natural Gas Company, a Delaware Corporation, with its principal office in Omaha, Nebraska, is a purchaser of natural gas in the Hugoton Field of Kansas.

2. That Northern Natural Gas Company is connected to and purchases gas from a large number of wells in the Kansas Hugoton Field, including a large number of wells owned by Cities Service Oil Company.

3. That evidence presented to the Commission in the public hearing held May 21, 1959, in Wichita, Kansas, in connection with Docket No. 60,043-C (C-7063) indicates that for several months past, Northern Natural Gas Company has not taken the full allowable established by the Commission for the Cities Service Oil Company wells to which it is connected.

4. Evidence presented at said hearing indicates further that Northern Natural Gas Company has not taken [fol. 30] ratably from the wells to which it is connected in the Hugoton Gas Field, and that as a result thereof correlative rights of producers in the field have been or will be violated.

5. That Northern Natural Gas Company should be ordered to show cause, at a public hearing hereinafter ordered, why it should not take ratably from the wells to which it is connected in the Hugoton Gas Field.

It Is, Therefore, by the Commission Ordered: That Northern Natural Gas Company be and it is hereby ordered to show cause why it should not take ratably from the wells to which it is connected in the Hugoton Gas Field of Kansas.

It Is Further by the Commission Ordered: That a public hearing herein be held at the District Court Room, Court House, Great Bend, Kansas, on Friday, June 26, 1959, beginning at 9 o'clock a.m., at which all interested parties are requested to appear.

By the Commission It Is So Ordered.

Raymond B. Harvey, Secretary.

(Seal)

That in said Commission's docket number in which such Show Cause Order was issued, said Commission on June 26, 1959, continued the hearing directed to July 24, 1959.

At such hearing the following parties appeared therein by counsel, to-wit:

[fol. 31]. APPEARANCES

Northern Natural Gas Company, Republic Natural Gas Company, Cities Service Oil Company, Colorado Oil & Gas Corporation, Northern Pump Company, Southwest Kansas Royalty Owners Association.

Commission appeared by its Counsel.

Testimony of REX D. FOWLER.

Direct examination.

By Mark H. Adams of Counsel for Northern Natural Gas Company:

I am employed by Northern Natural Gas Company as assistant manager of its Gas Supply Department. This department consists of four divisions:

(1) The Gas Purchases Division which engages in the negotiation and completion of contracts covering additional supplies of gas.

(2) The Gas Reserves and Availability Division which engages in the computation of underground reserves and the long-term availability of gas therefrom.

(3) The Storage Division which engages in the development and operation of underground gas storage reservoirs, and

(4) The Gas Purchased Operations Division which is charged with the responsibility of administering the various gas purchase contracts between Northern, as Buyer, and independent producers, as Sellers, covering all of Northern's gas supply in the several states and fields from which it originates. This Division

makes nominations to State Commissions whenever [fol. 32] and wherever called for and allocates Northern's total system gas requirements to the several sources of supply and to individual wells within those sources.

I direct the activities of these four divisions of the Gas Supply Department as assistant manager thereof.

I have been employed by Northern Natural Gas Company for about 22 years in its Gas Supply Department and during all of that time my work has been in connection with the proration and allocation of Northern's gas requirements. From January of 1953 until April of 1959 I was manager of the Gas Purchased Operations Division heretofore mentioned. One of the chief functions of that Division is the proration and allocation of gas. The Kansas Hugoton Field has been one of Northern's most important sources of supply of gas from the inception of the company to the present time. Since April, 1959, I have been assistant manager of all four divisions comprising Northern's Gas Supply Department.

I am generally familiar with all of the Gas Purchase Contracts under which Northern buys gas in the Kansas Hugoton Field. At all times since the beginning of my services for Northern, one of my major responsibilities has been in the area of operations under its gas purchase contracts, including the allocation of Northern's markets to the various wells and contracts, payment for gas purchased, and generally coordinating Northern's operations for purchasing gas with the obligations and contractual provisions under such various contracts. Accordingly, I have been concerned during all of my employment with Northern with the application of various state gas pro- [fol. 33] ration laws to Northern's gas purchased operations. In this respect I am familiar with the Gas Purchase Contract between Northern Natural Gas Company and Republic Natural Gas Company dated December 21, 1945, and the predecessor contracts thereto and am familiar with the history of operations under those contracts.

The Gas Purchase Contract dated December 21, 1945, is what is usually referred to as "Republic 'A' Contract" under which Northern buys the gas from 144 Republic Natural Gas Company wells in the Kansas Hugoton Field. This particular Republic "A" Contract was identified as Exhibit "4". The initial contract in this respect was dated May 27, 1930, and was between Missouri Valley Gas Company, as Seller, party of the first part, and Argus Production Company, party of the second part, and Missouri Valley Pipe Line Company, as Buyer, party of the third part. Republic Natural Gas Company has succeeded to the interests of Missouri Valley Gas Company and Argus Production Company, and Northern Natural Gas Company has succeeded to the interests of Missouri Valley Pipe Line Company. Amendatory and supplemental agreements were completed by the parties under date of July 1, 1932, and February 4, 1939. Under date of December 21, 1945, the parties entered into a new gas purchase contract which superseded and cancelled the agreements previously referred to. Subsequently, there was an amendment under date of June 30, 1953. The Republic "A" Contract of December 21, 1945, as amended, remains in effect today and is the contract under which operations between the parties thereto are being conducted. The initial contract of May [fol. 34] 27, 1930, and the supplements and amendments thereto were thereupon identified as Exhibits "1", "2", "3", "4", and "5". The Republic "A" Contract dated December 21, 1945, was identified as Exhibit "4". All of such exhibits were then offered and received in evidence.

Article I of December 21, 1945, Republic "A" Gas Purchase Contract is as follows:

ARTICLE I

Gas to Be Purchased and Sold

Section 1. Sale and Purchase Commitments. Subject to the terms and conditions and within the limitations hereinafter set forth, Republic agrees to sell and deliver to Northern and Northern agrees to receive, purchase and

pay for natural gas in its natural state produced or purchased by Republic in the "Hugoton Area" which, for the purposes of this contract, is defined to mean lands located in Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, and Counties in Kansas and Oklahoma immediately adjoining said Stevens, Morton of Grant Counties, Kansas, or Texas County, Oklahoma.

Section 2. Volume to be Purchased and Sold. The quantity of gas which Northern agrees to purchase and receive from Republic and Republic agrees to sell and deliver to Northern shall be sixty per centum (60%) of all gas which Northern may take or use, or cause to be taken or used, during the term of this contract, for the requirements of Northern for serving from its said pipe line and any extension thereof which Northern may make, all or any portion of that part of the States of Iowa and [fol. 35] Nebraska lying North of the 40th parallel of latitude and East of longitude 98 West of Greenwich (herein referred to as the "Omaha District"), which is hereby agreed to mean the total of:

(a) Sixty per centum (60%) of all gas sold by Northern in the Omaha District after adjusting sales pressure basis of measurement to the purchase basis of measurement, viz.: 16.4 pounds per square inch absolute pressure;

(b) Sixty per centum (60%) of all gas used as fuel at Northern's compressor stations located at Beatrice and Palmyra, Nebraska, and Oakland and Ogden, Iowa, measured on a basis of 16.4 pounds per square inch absolute pressure;

(c) Sixty per centum (60%) of all gas used as fuel at any other compressor station, or stations, except Ventura, which are now or may hereafter be constructed in the Omaha District measured on a basis of 16.4 pounds per square inch absolute pressure; provided, however, that in the event any such compressor station, or stations, shall be operated to compress gas for delivery to markets other than those located in the Omaha District, such 60% shall be

reduced in the same proportion that the volume of gas delivered therefrom to markets outside the Omaha District bears to the total volume compressed at said station;

(d) Sixty per centum (60%) of the volumes of lost and unaccounted-for gas measured at 16.4 pounds per square inch absolute pressure which shall be allocated to the Omaha District on the basis of the ratio of Northern's pipe-line miles of three-inch [fol. 36] equivalent within the Omaha District to the pipe-line miles of three-inch equivalent in Northern's total pipe-line system.

Section 3. Annual Minimum and Maximum Volumes. The aggregate volume of gas to be purchased by Northern and delivered by Republic hereunder during the twelve months' period beginning July 1 of each year shall not be less than 12,500,000,000 nor more than 36,500,000,000 cubic feet.

Section 4. Rate of Delivery. So far as practicable, and without interruption, Republic shall deliver and Northern shall take gas in accordance with Northern's market demands in the Omaha District, and Northern shall, from time to time, notify Republic of any anticipated substantial increase in such daily requirements; provided, however, that Republic shall never be obligated to deliver more than 100,000,000 cubic feet of gas during any 24-hour period; and provided further that it shall be deemed that Northern has complied with its obligation to take gas under this Article I if, on the 31st day of December of each year, Northern, so far as practicable, shall have taken during the preceding six months the volumes of gas specified herein, and if on or before June 30 of each year Northern shall have taken during the preceding twelve months the total amount of gas herein required.

The Republic "A" Contract, Exhibit "4", and the amendment thereto of June 30, 1953, Exhibit "5", are (minus acknowledgments and legal descriptions of leases) set out as appendices to this Abstract of the Record.

Tracing the history of the provisions in such contracts regarding the quantity of gas to be sold by Republic and [fol. 37] purchased by Northern, reference is first made to Article II of the old May 27, 1930, contract, Exhibit "1", the pertinent portion of which reads as follows:

> "The quantity of gas which Buyer agrees to purchase and receive from Seller and Seller agrees to sell and deliver to Buyer shall be, subject to the maximum and minimum amounts hereinafter provided in this article, sixty per centum (60%) of all the gas which Buyer may take or use, or cause to be taken or used, during the term of this contract, for the requirements of its said pipeline system (and any extension thereof which Buyer may make) serving all or a portion of that part of the States of Iowa and Nebraska lying north of the 40th parallel of latitude east of longitude 98 west of Greenwich, herein referred to as the Omaha District."

It should be noted that minimum and maximum quantities of gas are fixed for sale and purchase. The meaning of the words "Omaha District" is that area which embraces Northern's present markets in Iowa and Nebraska. The quantities specified in the contract were increased by contract amendments until the maximum amounted to 36.5 billion cubic feet. This amounts to 100 million cubic feet per day for a 365-day year. Referring to Article I Section 2 of the Republic "A" Contract (Exhibit "4"), it will be noted that the quantity amounting to 60% of the Omaha District requirement is again defined essentially in the same manner as it was defined in the original contract (Exhibit "1") dated May 27, 1930. This basic quantity obligation has been carried forward into the contract presently in effect.

[fol. 38] Northern Natural Gas Company was incorporated April 25, 1930. It first marketed gas from its newly constructed transmission line on September 9, 1930. The Gas Purchase Contract of May 27, 1930 (Exhibit "1"), constituted one of the two major sources of supply relied upon as a gas reserve to support Northern's proposed interstate transmission pipe line system. Initially, delivery of gas from Republic to Northern occurred under this

contract in August, 1931. From that time through 1935 the rate of purchase was controlled by the minimum volumes specified in such contract and the amendments thereto. Commencing in 1936, 60% of Northern's requirements for serving the Omaha District exceeded the minimum volume specified in such contract and the rate of purchase was controlled by such requirements through the contract accounting year ending June 30, 1947. 60% of Northern's Omaha District requirements at that time was about 30 billion cubic feet of gas per year.

The Kansas Hugoton Gas Field was placed under proration by the State Corporation Commission effective April 1, 1944. Initially, the allowables assigned to the Republic "A" wells were sufficient to permit Republic to deliver to Northern 60% of Northern's requirements for serving the Omaha District. However, by 1947 the Omaha District requirements had grown to the point that 60% thereof exceeded the allowables of the Republic "A" wells and at the end of the contract accounting year, June 30, 1947, after Republic had delivered to Northern 60% of Northern's Omaha District requirement for that year, such Republic "A" wells were produced in excess of 4 [fol. 39] billion cubic feet over and above their allowables. Since June 30, 1947, Northern's rate of purchase from said Republic "A" wells has been controlled by the allowables granted thereto, Northern's Omaha District requirement having continued to grow.

This situation existing, a dispute arose between Republic and Northern concerning just how much gas Northern was required to purchase under the Republic "A" contract. This dispute was finally settled in the Supreme Court of the State of Kansas in the case entitled *Republic Natural Gas Company* v. *Northern Natural Gas Company* found at 172 Kan., page 450, in which the court determined that for each contract year (ending June 30 each year) Northern should regulate its purchases from the Republic "A" wells from time to time so that at the end of any given contract accounting year it will have purchased from the Republic "A" wells the volume of gas which Republic is entitled to produce and deliver to Northern

(under valid proration orders) for that particular year. Since that (Supreme Court) decision, Northern has endeavored to accept into its lines and purchase from the Republic "A" wells quantities of gas which will attain for such wells a zero status on the (State Corporation Commission) proration schedules at the end of each contract accounting year. By "zero status" I mean that said wells are allowed to produce their legal allowables and are neither over-produced nor under-produced in important amounts.

The history of Northern Natural Gas Company's purchase of gas in the Kansas Hugoton Field subsequent to the Republic "A" initial contract is about as follows: [fol. 40] While that initial contract was May 27, 1930 (Exhibit "1"), it was not until 1938 that Northern actively undertook to contract for the purchase of large volumes of additional gas supply in the Kansas Hugoton Field. During this time the Otis Gas Field in Kansas was developed and Northern's supply was supplemented by gas produced from that field. Beginning in 1938 and continuing until 1949, Northern contracted to buy additional gas supply in the Kansas Hugoton Field each year. Beginning about 1941, Northern began and carried out a program to develop leases which Northern had acquired in the Kansas Hugoton Field. Then in 1949 Northern contracted for the purchase of a large volume of gas under a Gas Purchase Contract with Cities Service Oil Company, as Seller, dated September 9, 1949, covering leasehold acreage which is, for the most part, several miles distant from the Republic "A" Contract acreage. After 1949 Northern continued to acquire additional supplies of gas, by gas purchase contract, from acreage in the Kansas Hugoton Field, generally in smaller acreage patterns than is covered in either the Republic "A" Contract or the Cities Service Oil Company Contract. Northern has, throughout the years, furnished a market outlet for many of the smaller wells in the Kansas Hugoton Field in the areas where the gas is of low B.T.U. content and where the wells, because of that fact, and because of their distance from other purchasing companies' gathering systems, would have been without any

participation in the market requirements for gas from the field. Many of these wells were connected to Northern's pipe line system without respect to whether or not Northern at any time needed gas therefrom to supplement its [fol. 41] gas supply. Currently, Northern has about 125 gas purchase contracts covering gas to be produced from the Kansas Hugoton Field under which producers have connected to Northern's pipe line system more than 1100 wells in said field.

I have already explained the provisions of the Republic "A" Contract dealing with the requirements for Northern's acceptance by purchase of gas produced thereunder. All of the other gas purchase contracts under which Northern purchases gas in this field, including that with Cities Service Oil Company, as Seller, contain express clauses requiring Northern to accept delivery of gas from the wells covered thereby ratably with all other wells to which Northern is connected in the Kansas Hugoton Gas Field, excluding, however, the volumes of gas Northern contracted to receive from the Republic "A" wells. Up to the present date, each and every gas purchase contract (other than the Republic "A" Contract) under which Northern buys gas in this field expressly refers to the requirements of the Republic "A" Contract and excludes the Republic "A" wells from the ratable take provisions in such contracts.

Exhibit "6" was then identified as the ratable take provision in the Gas Purchase Contract between Cities Service Oil Company, as Seller, and Northern Natural Gas Company, as Buyer, dated December 9, 1949, and as typical of the ratable take provisions in all of Northern's other contracts (except only the Republic "A" Contract). Exhibit "6" was then offered and received in evidence.

[fol. 42]

EXHIBIT 6

DKT No. 60,740-C
(C-7216)
Witness Fowler
July 24, 1959

EXCERPT FROM SEPTEMBER 9, 1949, NATURAL GAS PURCHASE CONTRACT BETWEEN CITIES SERVICE OIL COMPANY AND NORTHERN NATURAL GAS COMPANY

Section 3. Northern's Obligation to Purchase Gas.

(a) *Ratable Purchase of Gas.* Northern agrees to purchase and receive from Seller hereunder, subject to the provisions of subparagraphs (b) and (c) of this Section 3, gas produced from any common source of supply underlying the acreage described in Exhibits A, B, C and D, ratably (without discrimination) with all natural gas purchased and produced by Northern from the same common source of supply situated in the Kansas portion of the Hugoton Gas Field. Northern agrees to purchase and receive from Seller hereunder, subject to the provisions of subparagraph (c) of this Section 3, gas produced from any common source of supply underlying the acreage described in Exhibit E ratably (without discrimination) with all natural gas purchased and produced by Northern from the same common source of supply situated in the Oklahoma portion of the Hugoton Gas Field. Such ratable purchases shall be for such reasonable periods of time and computed under such proper and reasonable nondiscriminatory formulae as Northern may from time to time employ; provided, however, Northern agrees to con-
[fol. 43] sult with Seller prior to Northern's determination of any such formula.

(b) *Prior Obligations.* This contract is made expressly subject to the obligations of Northern under the following gas purchase contracts, and the volumes

of gas which Northern is obligated to purchase thereunder, plus such reasonable volumes of gas as Northern may take in excess of said volumes in order to avoid any penalty which might occur for failure to take the volumes Northern is obligated to purchase, are and shall be specifically excluded in the computation of the ratable purchase of gas as provided in subparagraph (a) of this Section 3, viz.:

(i) The gas purchase contract dated January 18, 1929, as now or hereafter amended or revised, with Panhandle Eastern Pipe Line Company, and Saturn Oil & Gas Company, Inc., or any new contract which supersedes said contract of January 18, 1929; and

(ii) The Gas Purchase Contract dated December 21, 1945, as now or hereafter amended or revised, with Republic Natural Gas Company, or any new contract which supersedes said contract of December 21, 1945.

It is further agreed that in the event Northern shall acquire the full interest in either of the respective properties from which gas is produced and delivered to Northern under either of the contracts above referred to, the foregoing provisions of this subparagraph (b) shall no longer be effective as to gas produced and delivered under that particular contract. It is also further [fol. 44] agreed that any amendment, revision or new contract, other than an extension of the term of the gas purchase contract of January 18, 1929, shall not operate to reduce Northern's obligation to purchase gas hereunder.

Within reasonable operating limits, Northern has at all times accepted delivery of gas ratably from all wells from which it purchases gas in the Kansas Hugoton Gas Field in accordance with the ratable take provisions of all of its gas purchase contracts. The 1100-plus wells connected

to Northern in this field are at locations from the southernmost to the northernmost ends of the field in Kansas, about 80 miles. The production therefrom is transmitted through three main compressor stations, several field gathering compressor stations, and many miles of gathering lines. Operating pressures and well pressures vary from time to time, and compressor plants are required to be closed down from time to time for mechanical repairs or overhauls. It is a very complex and prodigious job to maintain exact ratability in takes from all such wells, but through the years Northern has accepted gas, in accordance with the ratable take provision of its contracts, from all the wells in said field connected to its system. The leases and wells formerly owned by Northern in this field are now owned by its wholly-owned subsidiary corporation, Northern Natural Gas Producing Company. Such wells have delivered gas to Northern over any reasonable period of time ratably—at the same rate as all other wells in said field connected to Northern, except the Republic "A" wells—and have never been afforded any different treatment. To assure ratable take from such wells, the allocation of Northern's estimated requirements for gas from said field for any given month is accomplished on or about the first day of that month. While Northern is contesting the validity of the allowables fixed by the Commission since May of 1956, our calculations in this respect are made on the basis of Commission's allowables to avoid confusion.

[fol. 45]

Commissioner Beatty: I have a question right along the same line. Mr. Adams, when you say ratable take, do you mean—you don't mean ratable take between Republic "A" wells and all other wells, do you?

Mr. Adams: Yes, Your Honor. I believe when all of the testimony is all in, it will reflect, within reasonable operating limits, we have until just the last few months all during the years managed to take ratably from all wells connected to Northern's system without respect to this, what might be thought preferential, clause in the Republic "A" Contract. It will be our position that over a field where there is seventy years' production time that the short interval in which we are being compelled to give

preference in takes from the Republic "A" wells, in the long run will not result in actual unratable take. So, our testimony will proceed on the basis of endeavoring to show the Commission that we have reasonably taken on a ratable basis.

Commissioner Beatty: Notwithstanding the fact, if it is a fact, that "A" wells now are approximately in balance, and practically all other wells have accumulated large underages, is that right approximately as of now?

[fol. 46] Mr. Adams: That is correct as of now. We will have an exhibit to show the history ever since proration in the field of what has occurred with respect to taking from Republic "A" wells and all other wells to disclose to the Commission how nearly we have conformed to ratable taking from all wells connected to Northern's system. We confess that at the moment they are out of balance, but our intention is to get them back in balance within a reasonable time. I am not in a position to say how quickly it can be done, but certainly that is our intention.

Mr. Holl: My contention is that Northern Natural started out by laying the foundation for this testimony on the basis they are taking by introducing the contract, stating ratably under the contract. Strictly from that this conversation about taking ratably without any switch over and leaving the inference they are taking ratably at the present time is the thing I object to.

Chairman Wiles: Are you willing to restrict ratable take to ratable take under the contract?

Mr. Adams: No, Mr. Commissioner. There are two things. We contend that we have at all times taken ratably in accordance with our contract. We want to show the Commission the facts as to our taking, and why we have taken as we have taken. We believe those facts will show also that within reasonably operating limits until just the past few months we have actually taken ratably irrespective of the contract provisions.

Allocations of Northern's estimated requirements for gas from this field for any month, to assure ratable take in said field, are made in the following manner:

[fol. 47] The net allowable for the preceding month as

shown in the Commission's proration schedule is tabulated for each participating well.

The volumes shown in the Commission's schedules as having been cancelled from each such well for the period November, 1958, to date is similary tabulated and added to said net allowable for each well. From this result the estimated production for the preceding month is deducted. The result represents the status at the end of the preceding month as determined by the Commission plus volumes cancelled by the Commission. These status figures are then added together. To that total is added the estimated requirement for the current month under consideration and that total distributed among all participating wells in proportion to the individual adjusted deliverabilities of such wells.

As to each well, the difference between the volume thus distributed and the status thus determined from the Commission's proration schedules represents the volume that should be produced during the current month to maintain a precise ratable status, and is the allocation volume for the current month.

During periods when cancellation of underproduction is occurring, the above procedure will result in ratable cancellations.

There are many reasons why precise current ratable take cannot be attained. I shall mention a few of the more important ones. The total requirement figure for the current month is necessarily an estimate and may be changed either upwards or downwards to variations in the require- [fol. 48] ments of Northern's customers for gas. The yardstick used to determine ratability for the individual well is adjusted deliverability and will normally change once a year. Deliverability tests are taken once a year, and the testing procedures and volumes produced during the tests sometimes cause a distortion in ratable take. When a new well is connected to the system, several months may be required for such wells to attain the same relative position as the older wells. Some wells may, at times, be incapable of producing the required volume. The allocation procedure just outlined is followed as to all wells connected to Northern's system except during periods of time when

Northern's connection in such field are underproduced. When this situation exists, Northern's contractual commitment under the Republic "A" Contract, as interpreted by the Kansas Supreme Court—

Mr. Adams: As we understand it.

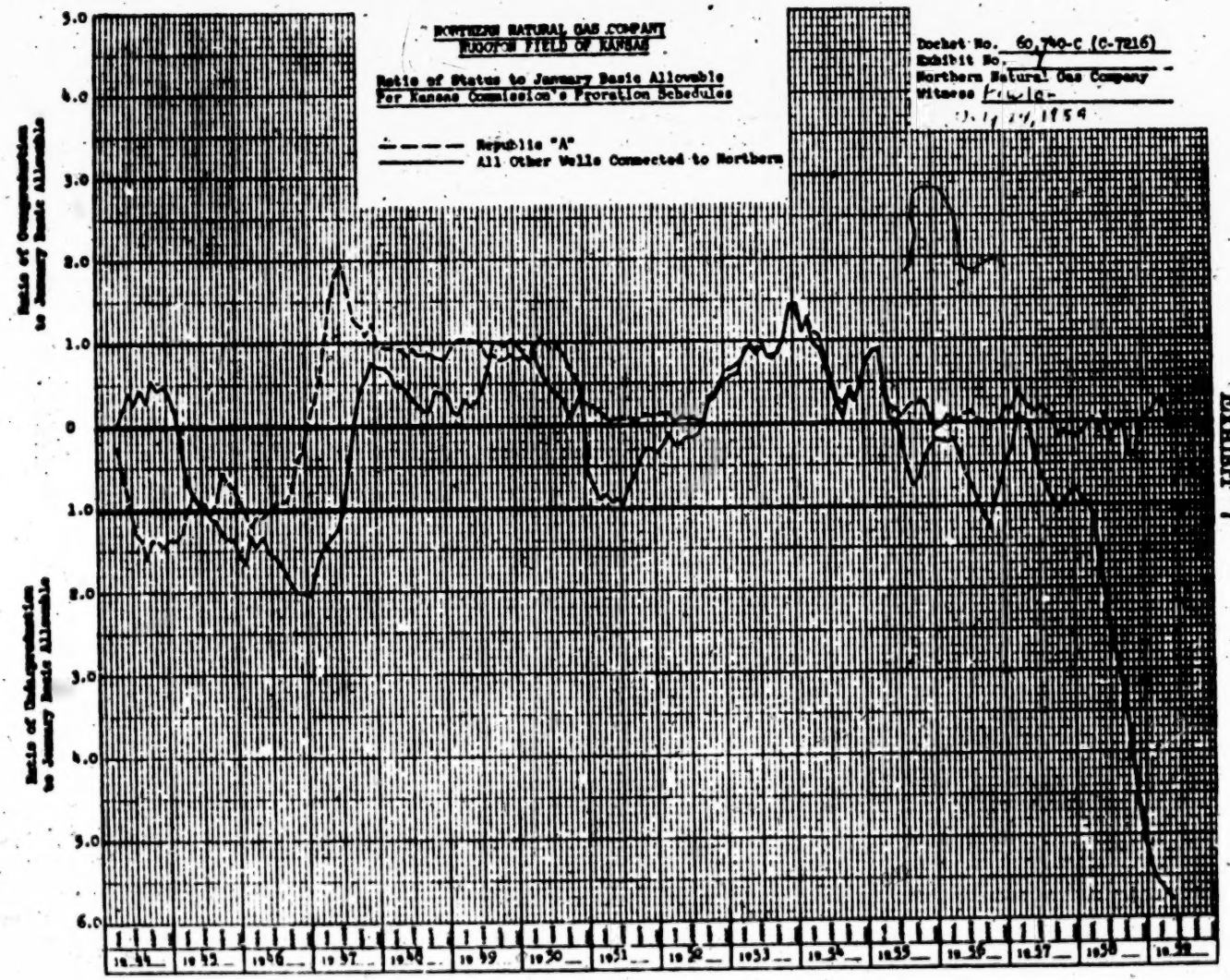
Mr. Jones (Attorney for Republic Natural Gas Company): Thank you.

A. —is deducted from Northern's total gas requirement from the Hugoton Field and allocated to the Republic "A" wells. The allocation to the other connected wells is then carried out in the manner previously outlined.

Q. Now, in your answer to this last question you made some reference to November, 1958, is that by reason of the fact that was the first month in 1958 in which there were any cancellations of any wells on Northern's system?

A. That is the first month in which any cancellations occurred of any significance, yes.

[fol. 49] Exhibit "7" was then identified as a graph showing the cumulative status to the preceding January Commission allowables for the Republic "A" wells as one item and for all other wells connected to Northern's system in the Kansas Hugoton Field as another item. In preparing this graph I have used the yardstick now in use by the Commission for determining when a well should be shut-in because of overproduction or when an allowable to a well should be cancelled due to underproduction. I have applied this yardstick for the entire period covered by the graph, which is from April, 1944, the effective date of proration in the Kansas Hugoton Field, through May 1959, which was the most recent month for which data was available.



[fol. 50]

EXHIBIT "Y"

[fol. 51] With reference to the zero line as indicated by the scale on the left-hand side of the graph, that portion of the graph above such zero line indicates overproduction, and that portion of the graph below the zero line indicates underproduction. Heavy horizontal lines have been used to indicate the zero line and to indicate when the wells are one-times the January allowable overproduction line. By that I mean it is the ratio of underproduction or overproduction at the end of any month to the preceding January allowables fixed by the Commission. The lines on the graph for the Republic "A" wells and the lines for the other wells as a group represent the ratio of cumulative Commission allowable status to the preceding January Commission allowable and do not represent volumes of gas as such. To illustrate, refer to the point on the graph for the month of January, 1945; the dashed line shows that Republic "A" group wells were then underproduced in the amount of about 1.4 times the applicable January Commission allowable, while the solid line representing other wells connected to Northern shows that group of wells were then overproduced in the amount of about .4 times the applicable January Commission allowable.

This graph reflects that for the entire period from April, 1944, through May, 1959, there were no important differences between the purchases from other wells for any extended period of time prior to the year 1958. That is, the differences in ratio is less than one-times the January allowable for essentially the entire period. Further, the lines cross at several points. A one-times January difference between the two graph lines, when converted into [fol. 52] volumes of gas and then into amount of reservoir pressure represented thereby, represents less than one pound of reservoir pressure, which is an insignificant amount.

It was not until the spring of 1958 that a wide divergence of the two lines appears. This was brought about for two reasons: First, as the Commission is well aware, allowables granted by the Commission to the field have exceeded the total field production by approximately 130 billion cubic feet and the wells connected to Northern, other than the Republic "A" wells, have become substantially underpro-

duced. Second, is the fact that Northern has been seriously delayed in expanding its system into new markets for gas by reason of the failure of the Federal Power Commission to issue the necessary Certificates of Public Convenience and Necessity. Given sufficient time, it is my belief that Northern will be able to conduct its operations in such a way that the two lines will again be brought together. This is based on the assumption that the Commission's future allowable assignments will be realistic, and on the further assumption that the necessary expansion certificates will be issued to Northern by the Federal Power Commission. There is good reason to believe that such certificates will be forthcoming. Detailed testimony and exhibits on Northern's proposed expansion of its facilities for the sale of greater volumes of gas were presented by Northern in Commission's Docket C-164 on January 23 and May 21, 1959, wherein Northern seeks a modification of Paragraph "P" of the Basic Proration Order for the Kansas Hugoton Field.

[fol. 53] Commission's June, 1959, Gas Proration Order and Report for the Kansas Hugoton Gas Field shows the status of all of the wells in said field with respect to over or underproduction. That order shows that the Republic "A" wells, as a group and pretty much well by well, have produced just about the allowables assigned to them by the Commission. All other wells connected to Northern are about equally underproduced with relation to the January basic allowable of each well within reasonable operating limits. There may be a few exceptions due to peculiar circumstances.

Exhibit "7" was then offered and received in evidence.

Upon application, the evidence taken in Northern's application to modify Paragraph "P" of the Basic Proration Order for the Hugoton Field of Kansas, in Commission Docket C-164 on January 23 and May 21, 1959, was incorporated in the record. This testimony related to Northern's efforts to secure Federal Power Commission certificates permitting expansion of Northern's facilities to reach additional markets and the status thereof (Tr. 31).

Cross examination.

By Mr. Ferd Evans (Attorney for Colorado Oil & Gas Corporation):

Starting in early 1958 the pattern changed sharply from what it was from the inception of time shown on Exhibit "7" with respect to whether or not Northern was taking gas approximately proportionately from the Republic "A" wells and from other wells connected to its system in the Kansas Hugoton Field.

By Mr. Evans:

Q. Mr. Fowler, is it literally true that all gas purchase contracts made by your company with producers other than [fol. 54] Republic are expressly subject to the provisions of Republic "A" contract?

A. Yes, that is right. In fact, we have one contract with Republic that is also expressly subject to the Republic "A" contract.

Q. You mean they are really all subject to Republic "A" contract?

A. That is right.

Q. I observe, Mr. Fowler, I am now looking at Exhibit "4" introduced by your company, that Article XII, Section 2, gas purchase contract of December 21, 1945; that section states: "This contract is subject to all valid legislation with respect to the subject matter hereof, either State or Federal, and to all valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction." I will ask you if the original contract of 1930 contained a similar provision?

A. I think I have found it now, sir. It is in Article XII, of Exhibit "1", to the contract of May 27, 1930. If you wish me to, I will read it.

Q. I will appreciate your reading it for my information and for the record.

A. "This agreement is subject to all present and future valid orders, rules and regulations of any regulatory body of the Federal government and the State or States in which said premises are situated."

Exhibit "7" does not reflect underproduction as such but is based on ratios which are determined from the status of wells as published in the Commission's schedules, and any cancellation of underproduction that had occurred prior to the month in question would have been excluded if such [fol. 55] underproduction exceeded six-times January allowable as provided in the basic order.

Cross examination.

By Mr. Dale Stucky (Attorney for Southwest Royalty Owners Association):

As far as facilities are concerned, it is not physically impossible for Northern to take gas ratably from the Republic "A" wells and all other wells connected to its system. Northern has taken its purchases of gas from the wells connected to its system in such field in accordance with its Gas Purchase Contracts and in accordance with the Kansas Supreme Court's decision interpreting the Republic "A" Contract as we have interpreted that decision.

I do not know of any rule or regulation or any statutory enactment that would prevent Northern from taking ratably from all wells to which it is connected in the Kansas Hugoton Field.

If the markets were sufficient so that Northern could take the current allowables from the Republic "A" wells and also take the current allowables from all other wells to it connected, then Northern's takes would be ratable as between all wells connected to its system. Where there is insufficient market to permit all of the wells to make their current allowables, then only the Republic "A" wells make their current allowables and the remaining wells ratably produce the balance of such market demand. In other words, when the market conditions are at the same level as the allowables then the same rate of take would exist between the Republic "A" wells and all other wells.

[fol. 56] Commissioner Beatty: Mr. Stucky and Mr. Adams, let's summarize. Doesn't the contract speak for itself and show that your Republic "A" wells are given certain preference over your other connections?

Mr. Adams: By contract, that is correct.

Commissioner Beatty: All right. Now, if certain wells are given preferences by contract, doesn't it follow that there is likely not to be ratable taking between those wells and other wells that are connected to Northern Natural; if one is given a preference, how can it be ratably? That is preventing the ratable taking, your preference provision of that contract, isn't that right?

Mr. Adams: There is no question about it. Since January or maybe a little into the year—I don't know, maybe March, 1958, there has not been ratable taking on the connections to Northern's wells as reflected in Exhibit "7".

Commissioner Beatty: From that point on isn't it purely a legal question as to whether or not the preferential provisions of your contract can take any preference over the statute requirements as to the ratable take and protection of correlative take, of following the rules and regulations by the Kansas Corporation Commission? Doesn't it follow that these contracts cannot take preference over the statutes and regulations of this Commission? What about that Mr. Stucky?

Mr. Stucky: I don't agree with the first premise.

Commissioner Beatty: What first premise?

Mr. Stucky: These contracts require preferential treatment one over the others. They do not require preferential treatment; they permit.

[fol. 57] Commissioner Beatty: The contracts are in evidence. They speak for themselves. They are the best evidence of what the contract is. I think, then, you can pick up the contract and argue from the contract—it is already in evidence—rather than arguing with the witness.

Q. Do you know of any reason why your company cannot take gas ratably from all wells connected to its system?

A. The present level of our markets will not permit us to run full current allowable from all our wells in the Hugoton Field. Our purchases have been according to my interpretation of the Supreme Court decision to the Republic "A" Contract and in accordance with the ratable take provisions of the balance of the contracts.

Cross examination.

By Mr. Alfred Holl (Attorney for Cities Service Oil Company):

Q. Again referring to your Exhibit No. 7, tell us from examination of that when the two lines on that exhibit actually meet, or you mentioned that they crossed numerous instances—tell us when was the last time they met actually?

A. The first half of 1955.

Q. Then, now, going back further to the only time that in looking at it I can see that it actually crossed and extended to the dark lines side, lines extended and actually crossed, and extended above was way back in 1949, isn't that correct? Excuse me, the first part of '50?

A. Well, that is one of the points. However, if you look at late '52, all of '53, all of '54, the first half of '55, you will find that the lines are so close on the graph it is dif-
[fol. 58] ficult to tell which one is above and which one is below. They may cross several times in there.

Q. All right. Now, then, in order for wells to get back and balance with each other, couldn't we assume that those lines have to cross on occasion and one make up what they were behind in the times they did cross?

A. At the time the lines crossed, the two groups of wells would have produced proportionately to that date; does that answer your question, sir?

Q. Wouldn't they have to cross and extend each direction a little bit for them to make up either overage or underage?

A. No. When they meet, both groups are then at the same ratio and are in a ratable position. I don't interpret the exhibit to be such.

Q. I understood this to be current production in proportion to allowables then in effect?

A. Well, the exhibit is the ratio of cumulative status to the preceding January term, so it is cumulative at all times.

* * * * * * *

Q. Briefly, the dotted line, this dealing with cancellation currently—the dotted line here indicates no cancellations, as I understand, because there have been none on that group?

A. That is correct.

Q. Not in recent years, you are talking about I presume from about '55 through '59?

A. Correct. There have been no cancellations, certainly none of any importance.

[fol. 59] Q. Now, then, so we are straight, the solid line since the latter part of '58 does show cancellation, is that correct?

A. The line does not show cancellations. But as we have previously explained here, cancellations are occurring in the Commission's schedules as issued. I want to repeat that matter is at issue in the Supreme Court at this time.

Q. If the amount cancelled were included in there, that line would be more sharply steep, is that correct?

A. Yes. Cancellations commenced to occur on the schedules as issued in about November of 1958.

Q. Now, you testified, I believe, that there were 144 wells in the Republic "A" group?

A. The June schedule issued by the Commission shows 144 wells. One of those wells, I understand, either has or will shortly be plugged, and a replacement well has been drilled. Actually there are 143 wells, although the schedule shows 144.

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Commissioner Byrd: Could I ask a question, Mr. Holl, just pursuing—

Mr. Stucky: I would just take a minute.

Commissioner Byrd: I have heard your brief legal arguments. I want to ask Mr. Fowler one question along the line Mr. Holl was asking. I think you testified to this, but so that I am clear in my mind. On Exhibit 7 your solid line reflects the status of the other wells disregarding cancellations that have been made, is that correct?

A. That is correct.

Commissioner Byrd: Now, one other question. You stated regarding the litigation that is now before the Supreme Court as to the allowables which would affect this [fol. 60] black line and also affect the dotted line, have you made calculations as to what the relative position of these two lines would be if you win those cases?

A. I don't have any precise calculation on it. Do you? The schedules would have to be completely recomputed from May '56 forward.

Commissioner Byrd: Do you have an opinion as to whether or not the status of the two lines would be brought closer together on the graph or be wider apart as they are presently?

A. They would be closer together, because the allowables would be less, and the underproduction would be accordingly less.

Commissioner Byrd: Wouldn't your "A" group wells extend considerably above your zero line?

A. Yes, it would be, above the zero line, but it would not move as far above the zero line as the solid line moved toward the zero line. It would come closer together.

Commissioner Byrd: But the dotted line would be considerable above the zero line, and the solid line below the zero line, is that correct?

A. Yes, sir.

Commissioner Byrd: One other question. At any time depicted by this graph, Exhibit 7, have your Republic "A" wells been overproduced to a point where they had to be shut in?

A. Yes, in July of 1947 the Commission issued an order shutting in some 80 wells of Republic's.

Commissioner Byrd: Was that prior to the Supreme Court's decision that you referred to frequently in your testimony?

[fol. 61] A. Yes, sir.

Commissioner Byrd: You may not know the answer to this; if you don't, just state so. Do you know what happens to your obligations under Republic "A" contract when your allowable on your "A" wells will not let you produce what you are obligated to produce in your Republic "A" contract? You are obligated under that contract to take a certain per cent of the Omaha market?

A. Yes, sir.

Mr. Adams: Only as allowables permit.

Commissioner Byrd: You don't have to take 40 per cent if the allowable doesn't equal 40 per cent?

Mr. Adams: That is correct. The Supreme Court decision bears on that.

Mr. Jones: Mr. Adams' statement was his interpretation.

Commissioner Byrd: Referring to your Exhibit 7 then, and referring to the Kansas Statutes 55-703, and also our rules, which in effect adopt that statute as a rule, which in the statute and the rules say that a producer may produce only such portion of all natural gas that may be currently produced without waste and to satisfy the market demands as will permit each developed lease to ultimately produce approximately the amount of gas underlying such lease and currently produce proportionately with other said leases in said common source of supply. Now, do you have an opinion whether or not the wells depicted by the solid line on Exhibit 7 are currently producing proportionately to the wells depicted by your broken line?

A. I think we should remember that the Hugoton Field of Kansas is a field that is probably going to be produced [fol. 62] over a period of about 70 years. I think the word "currently" should be broadly interpreted, and we should not be concerned over a year or two's time.

Chairman Wiles: Is that another 70 years?

Mr. Adams: I hope not.

Commissioner Byrd: Your answer to my question would be, yes, you think they are currently producing proportionately with other leases?

A. I think so. We will pull those lines back together, we feel, with a little more time.

Commissioner Byrd: If I remember your evidence in the proceedings in C-164, you are talking about two and a half, three and a half, and four years?

A. I believe it was the end of 1961.

Commissioner Byrd: That would be two years, two and a half years?

A. Right.

Commissioner Byrd: And your definition of currently is two and a half years.

A. It might be considered to be longer than that. I think it would depend on the circumstances.

* * * * * * *

Cross examination.

By Mr. Charles McDermott (One of the Attorneys for Colorado Oil and Gas Corporation):

Q. * * * Is it not true that orders of, for instance, both this body and the Federal Power Commission have had the effect upon the say, the prices and the take provisions—I won't ask you what effect—but they have had an effect?

[fol. 63] *A. Certainly the Federal Power Commission has had its effect.

Q. So, it is not really an unusual thing in your experience to find provisions contained in one of your contracts or many of your contracts have been altered in some respect by a regulatory authority, is that correct?

A. I won't say it was unusual. I understand a valid order of a regulatory authority can supersede.

Testimony of R. T. Widney (Witness for Cities Service Oil Company).

Examination by Mr. Holl:

I am a petroleum engineer employed by Cities Service Oil Company as superintendent of its gas operations. I have conducted studies and prepared exhibits which I deem pertinent to this particular matter. Exhibit number 8 was identified as a tabulation showing analysis of percent of current allowable produced in the Kansas Hugoton Field by wells connected to Northern Natural Gas Company. This exhibit shows that in July, 1957, 80.33 percent of the current allowable was produced from the Cities Service Oil Company wells, while 109.06 percent of the current allowables were produced that month from the Republic "A" wells; that if all the wells in that particular month had been produced ratably each one of them should have been produced at the rate of about 70.33 per cent of their current allowable. Exhibit number 9 was then identified as a graph reflecting the detail on exhibit 8 and showing the percent of production by groups of wells, the Republic "A" wells as a group, Cities Service Oil Company wells

[fol. 64] as a group, and the balance of the wells connected to Northern's system as a group.

"Mr. Stucky: May I ask a clarifying question while we are between exhibits? Mr. Widney, is there any correlation when you compare the exhibits with Northern's exhibit 7 in any way?

A. I have not compared them. However, they would be comparable, with the exception that we have—if you would add Cities Service Oil Company wells and the balance of Northern Natural Gas Company wells, it would compare with the solid line of Exhibit 7 in this instance, the Northern Natural Gas Company. Although I have not made an exact comparison, it would be the same."

Exhibit number 10 was then identified as an analysis of the status of overage and underage of the wells connected to Northern Natural Gas Company in the Kansas Hugoton Field, dividing such wells into three groups (as was done in Exhibit 9) plus a total of all the wells connected to Northern in said field for the fourth group of wells. This exhibit reflected disproportionate purchases by Northern in January, 1959, with substantial preference being given to the Republic "A" group wells.

Exhibit number 11 was then identified as a graph representing the information contained in Exhibit 10.

Exhibit number 12 was then identified, it having been prepared to show the effect of drainage of offset wells in the Hugoton Field. It reflected the history of well "A" drilled in 1946 and the history of well "B" drilled five and a half years later on an adjoining governmental section. During the five and one half years referred to the pressure [fol. 65] dropped between the two wells locations was about 42 pounds.

Exhibit number 13 was then identified as a graphical representation of the data contained in Exhibit 12.

Q. You have said what effect the drilling of additional wells is on it. Are you implying from that that overproduction on one well and underproduction on another will have the same effect?

A. It will have the same effect. This might be a little more marked. It will have the same effect given a sufficient length of time.

Q. Your next two exhibits, as I understand, you have picked two other wells on which a comparison has been made, is that correct?

A. That is correct.

Exhibits numbered 14 and 15 were then identified to show the pressure drop between well "C" and well "D" which were offset wells but where well "C" was drilled some five years before well "D" was drilled.

Exhibit number 16 has been identified as being prepared to show the theoretical effect of production on drainage areas on wells in the Kansas Hugoton Field.

Exhibits numbered 8 through 16 were then offered in evidence.

Chairman Wiles: Are there any objections?

Mr. Adams: Just a moment, if the Commission please. We would like to object to Exhibits 12, 13, 14 and 15 for the reason that I think the Commission will take judicial notice that there are approximately 4,000 wells in the [fol. 66] Hugoton Field, and you could take almost anyone that knows anything about the gas business knows you could take two wells somewhere in that field and prove most anything. We don't believe under the circumstances that any exhibit drawn on two wells in that field is properly illustrative or could form a basis for any fair conclusion. As a consequence, we do not regard these exhibits as proper exhibits and ask they not be admitted.

Mr. Holl: I fail to see why that is a valid reason for objecting to the introduction of the exhibits. The witness has testified they are studies of wells in the Hugoton Gas Field and has explained them, and I think they have the proper foundation.

Commissioner Beatty: I would like to ask this witness a question along the same line. Mr. Widney, as Mr. Adams pointed out, these are just four wells out of 4,000?

A. That is right.

Commissioner Beatty: With such variations over the field, are you willing to go ahead and say that this is typical or representative of more than just those four wells?

A. The reason for the exhibits was to show that drainage does occur. We selected these particular wells, because there had been offset by production, and we thought it would most ably show that drainage can and does occur. I do not think it is representative of the 4,000 in the Hugoton Field. These are specialized instances only to illustrate a point.

Chairman Wiles: You are not contending then that they are representative of other wells?

A. I am not contending they are representative of all of the wells, no. All I am trying to illustrate here is that [fol. 67] drainage can occur in the Hugoton Field, as shown by actual experience.

Commissioner Beatty: Do you go further and say that when Well No. 2 is drilled as a general rule it will have some similar effect of neighboring Well No. 1?

A. Yes, it would. If Well No. 1 had been drilled prior, then it will have some effect.

Chairman Wiles: The Commission feels, Mr. Adams, that these four exhibits are admissible for what they attempt to prove as clarified by the witness. Exhibits 8 through 16 will be admitted.

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A. We have 210 wells in the Kansas Hugoton section of Northern Natural. Of the 210 wells we have a block of 59 wells in Morton County, Kansas. Now, the wells are blocked in a group and are offsetting in close proximity to the Republic "A" wells. Two wells, I believe, are direct offsets. The other wells are within the boundary of a block of wells, within two to three maybe four miles probably from the farthest well to the closest Republic "A" well.

Mr. Adams: Would it be in the neighborhood of say seven or eight miles?

A. Now that is an estimate from what I remember on the map at this time.

• • • • • • •

Q. Now, you have discussed the status of this field at this time and particularly with regard to the connections of Northern Natural, and I believe have expressed your opinion that there is drainage occurring, would you care [fol. 68] to offer for the Commission a recommendation or solution for this particular problem?

A. Well, there are two solutions. Number one, from our studies they indicate that if the wells are produced with the same per cent of allowable production or of net allowable production, then the wells will be ratable, and correlative rights will be protected. There are two ways of accomplishing this currently in the Hugoton Field. One is to raise the total Northern Natural's takes up until they are ratable with the Republic "A" group, and second would be to lower Republic "A" by curtailing their production, so they will become ratable with the balance of the field.

Q. In other words, you are saying you wouldn't be so concerned about underproduction if all the wells were underproduced at the same rate?

A. That is right.

Q. In other words, if they are underproduced at the current rate, if you go ahead and allow the wells that are currently greatly curtailed in underproduction to produce more gas than other wells to be curtailed currently that are relatively overproduced, then compensatory drainage will take place?

A. Yes, and the correlative rights of all the wells will be protected.

Cross examination.

By Mr. Adams:

Referring to Exhibit 12 the well "A" and the well "B" used in that exhibit are each located in Texas County, Oklahoma, where Cities Service Oil Company has 199 wells. In addition to the company's wells in Texas County, Okla- [fol. 69] homa, it has approximately 357 gas wells in the Kansas Hugoton Field. Referring to exhibit 15, Well "C" used in such exhibit is a Republic "A" well and Well "D" is a Cities Service Oil Company well. These two wells

are located in Morton County, Kansas. These two wells "C" and "D" are in the same governmental section, and are, therefore, less than a half mile apart. Wells "A" and "B" used in illustration in Exhibit 12 located in Oklahoma are a mile apart.

I am familiar with the gas purchase contracts and the provisions dealing with ratable taking therein with the exception of the Republic "A" group of wells from such ratable provision.

Cross examination.

By Mr. Richard Jones (Attorney for Republic Natural Gas Company):

In expressing recommendations to the Commission in this matter if the purchases from Republic "A" group of wells were curtailed and the volume of gas which would otherwise be purchased from such wells were purchased from the other wells connected to Northern until the end of 1961, the other wells would not suffer cancellation of allowables, which may otherwise be experienced. For Northern to increase its purchases from the Field is not the only practical solution.

Testimony of Mr. Lester Wilkonson in Behalf of Northern Pump Company.

Direct examination.

By Mr. Ferd Evans (Attorney for Northern Pump Company):

I am a consulting petroleum engineer employed by Northern Pump Company. Exhibit number 17 sponsored by the [fol. 70] witness was prepared to reflect the various groups of gas wells connected to Northern's system in the Kansas Hugoton Field showing comparable status of underproduction. This exhibit showed that all of the wells connected to Northern with the exception of the Republic "A" group were substantially underproduced. Exhibit number 18 was

identified showing the runs from the respective wells by groups connected to Northern's system in the month of June, 1959. This exhibit shows that during such month the Republic "A" wells were overproduced by 25% of the June current allowable and all other wells connected to Northern were underproduced 89.4% of their current allowable; that the Republic "A" group wells represented 19% of the connected deliverability to Northern and receive 73% of the gas which it purchased during June, while the other wells connected to Northern's system representing 81% of its connected deliverability received only 27% of the gas which Northern purchased in June, 1959. The conclusion drawn from Exhibit 17 is that had Northern taken ratably from all the wells connected to its system in the Kansas Hugoton Field to date there would have been no cancellation of underages to May 31 (1959) because the wells were only 5.7 January underproduced. Exhibits 17 and 18 were admitted in evidence.

Chairman Wiles: The record is closed and the matter will be taken under advisement by the Commission.

[fol. 71]

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. 60,740-C (C-7216)

Conservation Division

IN THE MATTER OF NORTHERN NATURAL GAS COMPANY
TO SHOW CAUSE.

ORDER—October 7, 1959

Now on this 7th day of October, 1959, the above-entitled matter comes before the Commission for further consideration and final disposition. The Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners), having examined the record, exhibits, files

and briefs of counsel, and being fully advised in the premises, finds:

1. That Northern Natural Gas Company is not taking ratably from its connections in the Kansas Hugoton Gas Field which is a common source of supply.

2. That Northern Natural Gas Company purchases part of its gas from Republic Natural Gas Company under a contract which shall be designated as the "Republic A" contract. That this "Republic A" contract requires Northern Natural Gas Company to take certain quantities of gas or pay for it even if not taken. That this "Republic A" contract has a further provision making it subject to all valid legislation and all valid orders, rules, and regulations of duly constituted authorities having jurisdiction.

3. That the wells dedicated by Republic Natural Gas Company to the fulfillment of this "Republic A" contract have been produced at a much greater rate (percentage of [fol. 72] allowables) than other wells connected to the Northern Natural Gas Company system. That the disparity in rates of production has been so great that many wells have accumulated sizeable underages while the wells producing under the "Republic A" contract are producing the current allowable and some are overproduced. That this is not ratable taking from a common source of supply.

4. That under the Gas Conservation Laws of the State of Kansas, G.S. 1949, 55-703, the Commission is given the duty and power to "so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation. • • • " This is also reflected in the Basic Order for the Hugoton Field.

5. That the right to enter into private contracts can not be used as a means to circumvent lawful orders of the Commission or valid laws passed by the Legislature. Therefore the fact that Northern Natural Gas Company may be contractually bound to take a certain quantity of gas from certain wells is not binding on the Commission in its duty to regulate the production of gas from the entire field.

6. That Northern Natural Gas Company should be ordered to take gas ratably from its connections in the Kansas Hugoton Gas Field.

It Is, Therefore, by the Commission Ordered: That Northern Natural Gas Company be and it is hereby ordered to take gas ratably from all wells to which it is connected in the Kansas Hugoton Gas Field.

[fol. 73] The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

By the Commission It Is So Ordered.

Raymond B. Harvey, Secretary.

(Seal)

While the aforementioned Order was dated October 7, 1959, it was not issued or delivered to Northern Natural Gas Company until October 29, 1959. Thereafter, and on November 6, 1959, Northern Natural Gas Company timely filed with the Commission petition for rehearing, which without formal parts is as follows:

PETITION FOR REHEARING—Filed November 6, 1959

Comes Now Northern Natural Gas Company, a corporation, petitioner, and hereby petitions this Commission for an order setting aside and granting a rehearing in the above captioned proceeding with respect to Commission's "Order" dated October 7, 1959, and in support thereof shows:

1. That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein engaged generally in the business of purchasing natural gas for transportation by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into [fol. 74] Nebraska, Iowa, Minnesota and South Dakota; that

in such operation, and as an integral part thereof, petitioner has, among other things, entered into about 125 contracts with certain producers in Finney County, Kansas, and other counties in the Kansas Hugoton Gas Field under which (a) the recoverable gas under the lease acreage covered by said contracts was and is dedicated to be sold to Northern Natural Gas Company, and (b) express provisions are included in all such contracts which prescribe a certain method of apportionment amongst all such producers of Northern's requirements for gas from the said field; that petitioner is a natural gas company as defined in the Natural Gas Act, as amended (15 U. S. C. A. 717, *et seq.*), and is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for domestic, commercial, industrial and other uses. Virtually all of the sales of natural gas to Northern in the Kansas Hugoton Gas Field are sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and as such are subject to the provisions of said Natural Gas Act and to the jurisdiction of the Federal Power Commission thereunder. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Gas Field and contract rights with respect thereto being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale in interstate commerce for resale.

[fol. 75] 2. That the "Order" complained of, while dated October 7, 1959, was not issued or delivered to petitioner until October 29, 1959.

3. That said "Order" is unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void, in that:

(a) The findings therein are contrary to the evidence, are not supported by any competent evidence and are wholly unauthorized, unfounded and unwarranted, either under the evidence or under the Stat-

utes of Kansas, relating to "production and conservation of natural gas", Sections 55-701, *et seq.*, G.S. of Kansas, 1949, as amended.

(b) It is contrary to and in direct conflict with said Commission's Basic Proration Order, as amended, for the Kansas Hugoton Gas Field promulgated and adopted by said Commission March 21, 1944, in Docket C-164 initially effective March 21, 1944.

(c) It is arbitrary, capricious and discriminatory as to petitioner, is an unreasonable abuse of administrative authority on the part of the Commission, and is contrary to and beyond the scope of powers granted the Commission by any statute.

(d) It purports to amend said Commission's Basic Proration Order for the Hugoton Gas Field insofar only as it affects one (Northern Natural Gas Company) of the seven principal purchasers of gas therein and in a proceeding not noticed to any party as being a proceeding for the amendment of said Basic Proration Order all in violation of the due process clause of the Constitution of the United States.

[fol. 76] (e) It is so vague and indefinite as to what it purports to establish as ratable taking as to be impossible of reasonable interpretation or proper administration; it is the making of a rule as the occasion arises, which certainly is not a guide for anyone; it amounts to rule by man rather than rule by law and is lacking in due process of law.

(f) It purports to strike down and amend the express provisions in all of petitioner's gas purchase contracts in the Kansas Hugoton Gas Field by which all producers selling gas to petitioner have agreed to the apportionment of Northern's gas requirements amongst them, thereby (a) casting an unlawful burden upon, impairing and impeding the interstate operations of petitioner in the purchase, transportation and sale in interstate commerce of natural gas for resale taken by petitioner from said

Kansas Hugoton Gas Field in violation of the commerce clause of the United States, (b) in impairment of and contrary to the exclusive jurisdiction of the Federal Power Commission under the subsisting provisions of the Natural Gas Act, 15 U.S.C.A. 717, *et seq.*, and (c) in impairment of the obligations of such gas purchase contracts in violation of Section 10 of Article I of the Constitution of the United States.

(g) It destroys and takes petitioner's contract and property rights without compensation, denies petitioner equal protection of the law and abridges petitioner's privileges and immunities in contravention and in violation of Sec. 17, Art. 2 of the Constitution of the State of Kansas, and the Fourteenth Amendment to the Constitution of the United States.

[fol. 77] (h) Unless rehearing is granted herein as prayed for, petitioner shall assume that it is the meaning and intent of Commission's "Order" dated October 7, 1959, that the provisions of all of petitioner's gas purchase contracts in the Kansas Hugoton Gas Field which provide for a method of purchases and receipts of gas which in operative effect are contrary to or vary from "ratable taking" as determined by the Commission, are invalid and void as against public policy, including any such provisions which purport to require purchases and receipts of gas at rates and in amounts greater than required by such "ratable taking", as well as any such provisions which purport to permit purchases and receipts of gas at rates and in amounts less than required by such "ratable taking".

Wherefore, and by reason of the foregoing, petitioner prays that its Petition for Rehearing be granted and that upon such rehearing said "Order" be set aside and appropriate order entered in accordance with the evidence presented and the applicable law.

COMMISSION ORDER DENYING PETITION FOR REHEARING
November 10, 1959

Now on this 10th day of November, 1959, the above-entitled matter comes before the Commission for further consideration on the petition for rehearing filed herein November 6, 1959, by Northern Natural Gas Company with respect to the Commission order issued herein dated October [fol. 78] 7, 1959. The Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners) having re-examined its files and records herein, and being advised in the premises, finds:

1. That the Commission order above-referred to issued herein on October 7, 1959, was a valid exercise of its authority under G.S. 1949, Chapter 55, Article 7, as amended.

2. That the petition for rehearing filed herein presents no new matter for Commission consideration; that said petition for rehearing is without merit and should be denied.

It Is, Therefore, by the Commission Ordered: That the petition for rehearing filed herein by Northern Natural Gas Company be and it is hereby denied.

By the Commission It Is So Ordered.

Wiles, Chm.; Beatty, Com.; Byrd, Com.

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

PETITION FOR JUDICIAL REVIEW—Filed December 8, 1959

Case No. 10740

Comes Now the Petitioner, Northern Natural Gas Company, and for its petition for judicial review herein against [fol. 79] the action of the above named Respondent, alleges and shows to the Court as follows:

1. That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein engaged generally in the business

of purchasing natural gas for transportation by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota; that in such operation, and as an integral part thereof, petitioner has, among other things, entered into about 125 contracts with certain producers in Finney County, Kansas, and other Kansas counties within the confines of the Kansas Hugoton Gas Field, which contracts are presently subsisting and have subsisted during all times material herein, for the purchase of natural gas produced in and from said field, and under which contracts (a) the recoverable gas under the lease acreage covered by said contracts was and is dedicated to be sold to Northern Natural Gas Company, and (b) express provisions are included in all such contracts which prescribe a certain method of apportionment amongst all such producers of Northern's requirements for gas from the said field; that petitioner is a natural gas company as defined in the Natural Gas Act, as amended (15 U.S.C.A. 717, *et seq.*) and is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for domestic, commercial, industrial and other uses. That such sales of natural gas are [fol. 80] sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and as such are subject to the provisions of said Natural Gas Act and to the jurisdiction of the Federal Power Commission thereunder. Petitioner is an interested party in captioned proceeding, its substantial gas reserves in the Kansas Hugoton Gas Field and contract rights with respect thereto being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale in interstate commerce for resale.

2. That Respondent, the State Corporation Commission of the State of Kansas, is an administrative body, created by legislative enactment, with its principal place of business and post office address at State Office Building, Topeka, Kansas, but the Conservation Division thereof

having its place of business and address at 500 Insurance Building, Wichita, Kansas; that Harry G. Wiles is Chairman of said Commission and Marion Beatty and Richard C. Byrd are members of said Commission.

3. That this is an action under G.S. 1949, 55-707, for a judicial review of proceedings before the State Corporation Commission of the State of Kansas in its Docket No. 60,740-C (C-7216) wherein it issued its "Order" dated October 7, 1959. That a full and complete transcript of the proceedings had in said docket, together with all exhibits therein introduced and attached thereto, is being filed in this court and are made a part hereof to the same extent as though set out verbatim. That a copy of said [fol. 81] "Order" dated October 7, 1959, is marked Exhibit "A", attached hereto and made a part hereof. That upon issuance of said "Order" dated October 7, 1959, petitioner timely filed with Respondent a Petition for Rehearing, a true copy of which, without proof of service, is marked Exhibit "B" attached hereto and made a part hereof. That on November 10, 1959, said Petition for Rehearing was denied by Commission Order, a true copy of which is attached hereto as Exhibit "C" and made a part hereof.

4. That said "Order" dated October 7, 1959, is unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void for each, every and all of the reasons set forth in Petitioner's Petition for Rehearing, Exhibit "B" attached hereto.

5. That such "Order" is so vague, indefinite and uncertain as to leave unanswered necessary questions pertaining to its applicability and effect upon provisions in Petitioner's gas purchase contracts in the Kansas-Hugoton Gas Field which might provide for a method of purchases and receipts of gas at rates and in amounts which, in operative effect, may be contrary to or vary from "ratable taking" as determined by the Commission, including any such provisions which purport to require purchases and receipt of gas at rates and in amounts greater than required by such "ratable taking" as well as any such provisions which

purport to permit purchases and receipt of gas at rates and in amounts less than required by such "ratable taking".

6. That for all the reasons hereinabove stated and alleged, Petitioner respectfully asks said Court at this time [fol. 82] to grant a stay of execution of the "Order" dated October 7, 1959.

Wherefore, Petitioner prays:

(a) That this Court grant instanter a stay of execution of enforcement of the "Order" dated October 7, 1959;

(b) That this Court enter judgment herein setting aside said "Order" dated October 7, 1959, for the reasons that it is unreasonable, arbitrary, unlawful, beyond the jurisdiction of the Commission and void; and

(c) That Petitioner be granted all other relief to which Petitioner may be entitled hereunder.

The instruments which were exhibits to such Petition for Judicial Review are as follows:

Exhibit "A" was Commission's order of October 7, 1959, which is set forth in full Abstract pages 68-70.

Exhibit "B" attached to such Petition for Judicial Review was the Petition of Northern Natural Gas Company for rehearing which is heretofore set forth in full Abstract pages 70-74.

Exhibit "C" attached to said Petition for Judicial Review was Commission's Order denying Petition for Rehearing which is heretofore set forth in full Abstract pages 74-75.

[fol. 83]

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

No. 10740

NORTHERN NATURAL GAS COMPANY, Petitioner,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, HARRY G. WILES, Chairman, MARION BEATTY and RICHARD C. BYRD, as Members of said Commission and their respective successors in office, Respondent.

MOTION TO DISMISS—Filed February 9, 1960

Comes now the respondent, State Corporation Commission, and moves the Court for an order dismissing the Petition for Judicial Review filed herein by Northern Natural Gas Company, and in support thereof states:

1. That the State Corporation Commission by its order of October 7, 1959, entered in Docket No. 60,740-C (C-7216), directed Northern Natural Gas Company to take natural gas ratably from all wells to which it is connected in the Kansas Hugoton Gas Field. That said order is attached to the aforementioned Petition for Judicial Review as Exhibit "A"; and that said order constitutes the sole subject matter of said Petition for Judicial Review.

2. That by its order of February 8, 1960, entered in the said Docket No. 60,740-C (C-7216), a true copy of [fol. 84] which is attached hereto as Exhibit "A", the State Corporation Commission has rescinded in full the said previous order of October 7, 1959.

3. That as a result of said order of February 8, 1960, the previous order of October 7, 1959, is no longer of any force or effect and that the subject matter of the Petition for Judicial Review no longer exists and the question presented therein is now moot.

Respectfully submitted,

State Corporation Commission of the State of Kansas, By Its Attorney, J. Robert Wilson, General Counsel.

EXHIBIT "A" TO MOTION TO DISMISS

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. 60,740-C (C-7216)

Conservation Division.

In the Matter of NORTHERN NATURAL GAS COMPANY to Show Cause

ORDER

Now on this 8th day of February, 1960, the above-entitled matter comes on for further consideration and determination by the State Corporation Commission (Harry G. Wiles, Chairman, Marion Beatty and Richard C. Byrd, Commissioners) hereinafter referred to as the Commission, upon its own motion; and the Commission, having [fol. 85] examined the files and records, and being thereby fully advised in the premises, finds:

1. That the Commission, upon its own motion, by order of May 27, 1959, undertook to investigate the matter of ratable production of natural gas by the Northern Natural Gas Company from its wells located in the Kansas Hugoton Gas Field. A full investigation and hearing was conducted before the Commission on July 24, 1959. That as a result of such hearing and investigation the Commission found that Northern Natural Gas Company was not taking natural gas ratably from the Kansas Hugoton Gas Field; whereupon the Commission entered its order of October 7, 1959, directing the said Northern Natural Gas Company to take natural gas ratably from the Kansas Hugoton Gas Field.

2. That the Commission, of its own motion, by order of November 12, 1959, entered into an investigation for the purpose of promulgating a statewide rule requiring all producers to take natural gas ratably from all wells within a common source of supply to which they are connected. Whereupon, hearings in said matter were conducted before the Commission on December 17, 1959, and

January 21, 1960, in Docket No. 34,780-C (C-1825); and as a result thereof, the Commission determined that the provisions of G.S. 1949, 55-703, imposed a duty upon the Commission to promulgate such a rule, and by order of February 3, 1960, the Commission thereupon promulgated Rule 82-2-219 requiring all producers to take natural gas ratably from all wells within a common source of supply to which they are connected.

[fol. 86] 3. That Rule 82-2-219 became effective February 8, 1960, and being statewide in application, was filed with the Revisor of Statutes on February 8, 1960, and is thereby applicable to Northern Natural Gas Company and all other companies similarly situated. That the said Rule 82-2-219, being now in full force and effect, accomplishes the same purpose as the Commission's order of October 7, 1959, entered in this docket; and as a result thereof, said order is no longer necessary and should be rescinded in full.

It Is, Therefore, by the Commission Ordered: That the Commission's order of October 7, 1959, entered in this docket be, and it is hereby rescinded in full.

By the Commission It Is So Ordered.

Raymond B. Harvey, Secretary.

(Seal)

SFF:fr

Affidavit of Service (omitted in printing).

[fol. 87]

Order Denying Motion to Dismiss—February 23, 1960

Now on this 23rd day of February, 1960, comes on for hearing motion of respondent, The State Corporation Commission, for an order dismissing the petition for judicial review filed herein by Northern Natural Gas Company; respondent, The State Corporation Commission, appearing by its counsel of record and petitioner Northern Natural Gas Company, appearing by its counsel of record.

[fol. 88] Thereupon, the Court having listened to arguments and statements of counsel, and having reviewed the

Court file, and being duly advised in the premises, finds that by its order of February 8, 1960, The State Corporation Commission has rescinded its previous order of October 7, 1959, which is the subject matter of the said petition for judicial review. The Court further finds, however, that such order of The State Corporation Commission dated February 8, does not have retroactive effect, and that the order dated October 7, 1959, in this cause, was in effect from October 7, 1959, to February 8, 1960. The Court further finds that such motion to dismiss filed herein by respondent, The State Corporation Commission, should be and the same is hereby denied.

It Is So Ordered.

JOURNAL ENTRY OF JUDGMENT—April 8, 1960

Now on this 8th day of April, 1960, there comes on for consideration and determination by the Court; the petition of Northern Natural Gas Company for Judicial Review of the October 7, 1959, Order of the State Corporation Commission directing the petitioner to take gas ratably from the Kansas Hugoton Gas Field. The petitioner ap-
[fol. 89] pears by its attorneys of record, and the respondent, State Corporation Commission, appears by its attorneys of record.

Whereupon, the Court, having examined the files and records herein, and having heard the argument of counsel on March 15, 1960, finds that the said order of the State Corporation Commission, dated October 7, 1959, directing petitioner to take gas ratably from the Kansas Hugoton Gas Field is lawful, valid, and reasonable, and should be affirmed.

It Is, Therefore, by the Court Considered, Adjudged and Ordered: That the October 7, 1959, Order of the State Corporation Commission directing Northern Natural Gas Company to take gas ratably from the Kansas Hugoton Gas Field is affirmed.

By the Court,

Roland H. Tate, Judge.

MOTION FOR NEW TRIAL—Filed April 11, 1960

Comes now Northern Natural Gas Company and moves the court for an order vacating the judgment previously entered herein and granting a new trial in the above entitled cause for the following reasons:

1. Because of abuse of discretion of the court.

[fol. 90] 2. Because of accident and surprise which ordinary prudence could not have guarded against.

3. Because this petitioner was not afforded a reasonable opportunity to present its evidence and be heard on the merits of the case.

4. Because of erroneous rulings of the court.

5. Because the judgment and decision is in whole or in part contrary to the evidence.

6. Because of newly discovered evidence which petitioner could not with reasonable diligence have discovered and produced at the trial.

7. Because the judgment and decision of the court was procured by the corruption of the party obtaining it.

By all of which the rights of the petitioner herein, Northern Natural Gas Company, were substantially affected.

ORDER OVERRULING MOTION FOR NEW TRIAL—April 27, 1960

Now on this 27th day of April, 1960, the above entitled matter comes on for hearing on the motion of the petitioner Northern Natural Gas Company for a new trial herein. The parties appear by their attorneys of record.

Thereupon the court considers the pleadings filed herein, hears arguments of counsel and being otherwise fully ad-
[fol. 91] vised in the premises finds that petitioner's motion for new trial herein should be overruled.

It Is, Therefore, by the Court Considered, Ordered, Adjudged and Decreed that the motion for new trial filed herein by Petitioner Northern Natural Gas Company be and the same is hereby overruled.

NOTICE OF APPEAL—Filed May 6, 1960

To: The State Corporation Commission of the State of Kansas, and J. Robert Wilson, General Counsel, and S. F. Fleeker, Assistant General Counsel, its attorneys of record.

You and each of you please take notice that the above named petitioner, Northern Natural Gas Company, has appealed and does hereby appeal to the Supreme Court of the State of Kansas, from the judgment and decision, and every part thereof, of the District Court of Finney County, Kansas, made herein and entered on April 8, 1960, and does further appeal to said Supreme Court from the order of said District Court, denying and overruling said petitioner's motion for new trial, made herein and entered on April 27, 1960, in said above entitled action.

———

[fol. 92]

SPECIFICATIONS OF ERROR

I.

The trial Court erred in its judgment affirming the Order of the State Corporation Commission dated October 7, 1959, in that:

(a) Said Order and each of the findings of fact therein purporting to be in support thereof are unauthorized by and contrary to the valid subsisting provisions of the Statutes (particularly 55-703, G.S. 1949 as amended) dealing with the production and conservation of natural gas, the Basic Proration Order for the Kansas Hugoton Gas Field and the statewide gas conservation Rules and Regulations of the Commission.

(b) Such Order is not supported by substantial, competent, relevant and material evidence, but is contrary thereto.

(c) That said Order is arbitrary, unreasonable and discriminatory, has no relationship to proration or conservation of gas, burdens interstate commerce, and

takes appellant's property and contract rights in property, all in violation of the Federal Constitution, namely the Commerce Clause (Clause Three, Section Eight of Article I) the Contract Clause (Clause One, Section Ten of Article I) and the provisions of the Fourteenth Amendment thereto and the Kansas Bill of Rights, Sections 1, 2 and 18 and Section 17, Article 2 of the Kansas Constitution.

(d) Said Order, together with the Statutes upon which the same is based as construed to authorize such Order, under the evidence as applied to appellant, violate the provisions of the Natural Gas Act (15 [fol. 93] U.S.C.A. 717 *et seq.*) and invades the jurisdiction of the Federal Power Commission thereunder.

[fol. 94]

APPENDIX I

(Exhibit 4)

GAS PURCHASE CONTRACT

DATED DECEMBER 21, 1945

REPUBLIC NATURAL GAS COMPANY

AND

NORTHERN NATURAL GAS COMPANY

[fol. 96]

GAS PURCHASE CONTRACT

This Contract, made and entered into this 21st day of December, 1945, by and between REPUBLIC NATURAL GAS COMPANY, a Delaware corporation, as party of the first part, hereinafter referred to as "Republic" and NORTHERN NATURAL GAS COMPANY, a Delaware corporation, as party of the second part, hereinafter referred to as "Northern";

WITNESSETH: That in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the parties, it is hereby agreed as follows:

ARTICLE I

GAS TO BE PURCHASED AND SOLD

SECTION 1. *Sale and Purchase Commitments.* Subject to the terms and conditions and within the limitations hereinafter set forth, Republic agrees to sell and deliver to Northern and Northern agrees to receive, purchase and pay for natural gas in its natural state produced or purchased by Republic in the "Hugoton Area" which, for the purposes of this contract, is defined to mean lands located in Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, and Counties in Kansas and Oklahoma immediately adjoining said Stevens, Morton or Grant Counties, Kansas, or Texas County, Oklahoma.

SECTION 2. *Volume to Be Purchased and Sold.* The quantity of gas which Northern agrees to purchase and receive from Republic and Republic agrees to sell and deliver to Northern shall be sixty per centum (60%) of all gas which Northern may take or use, or cause to be taken or used, during the term of this contract, for the require- [fol. 97] ments of Northern for serving from its said pipe line and any extension thereof which Northern may make, all or any portion of that part of the States of Iowa and Nebraska lying North of the 40th parallel of latitude and East of longitude 98 West of Greenwich (herein referred to as the "Omaha District"), which is hereby agreed to mean the total of:

(a) Sixty per centum (60%) of all gas sold by Northern in the Omaha District after adjusting sales pressure basis of measurement to the purchase basis of measurement, viz.: 16.4 pounds per square inch absolute pressure;

(b) Sixty per centum (60%) of all gas used as fuel at Northern's compressor stations located at Beatrice and Palmyra, Nebraska, and Oakland and Ogden,

Iowa, measured on a basis of 16.4 pounds per square inch absolute pressure;

(c) Sixty per centum (60%) of all gas used as fuel at any other compressor station, or stations, except Ventura, which are now or may hereafter be constructed in the Omaha District measured on a basis of 16.4 pounds per square inch absolute pressure; provided, however, that in the event any such compressor station, or stations, shall be operated to compress gas for delivery to markets other than those located in the Omaha District, such 60% shall be reduced in the same proportion that the volume of gas delivered therefrom to markets outside the Omaha District bears to the total volume compressed at said station;

(d) Sixty per centum (60%) of the volumes of lost and unaccounted-for gas measured at 16.4 pounds per [fol. 98] square inch absolute pressure which shall be allocated to the Omaha District on the basis of the ratio of Northern's pipe-line miles of three-inch equivalent within the Omaha District to the pipe-line miles of three-inch equivalent in Northern's total pipe-line system.

SECTION 3. *Annual Minimum and Maximum Volumes.* The aggregate volume of gas to be purchased by Northern and delivered by Republic hereunder during the twelve months' period beginning July 1 of each year shall not be less than 12,500,000,000 nor more than 36,500,000,000 cubic feet.

SECTION 4. *Rate of Delivery.* So far as practicable, and without interruption, Republic shall deliver and Northern shall take gas in accordance with Northern's market demands in the Omaha District, and Northern shall, from time to time, notify Republic of any anticipated substantial increase in such daily requirements; provided, however, that Republic shall never be obligated to deliver more than 100,000,000 cubic feet of gas during any 24-hour period; and provided further that it shall be deemed that Northern

has complied with its obligation to take gas under this Article I if, on the 31st day of December of each year, Northern, so far as practicable, shall have taken during the preceding six months the volumes of gas specified herein, and if on or before June 30 of each year Northern shall have taken during the preceding twelve months the total amount of gas herein required.

[fol. 99]

ARTICLE II

Price and Payment

Section 1. *Initial Price for Gas.* For all natural gas delivered hereunder to and including the 30th day of June, 1951, Northern shall pay Republic six cents (6¢) per thousand cubic feet.

Section 2. *Adjustment of Price for Gas.* For all natural gas delivered hereunder subsequent to June 30, 1951, the price to be paid shall be adjusted every third year as provided in subparagraph (a) and (b) of this Section, but in no event shall said adjusted price be less than six cents (6¢) nor more than ten cents (10¢) per thousand cubic feet.

(a) *By Agreement of Parties.* Not later than June 30 of each third year, beginning with the year 1950, Northern and Republic shall negotiate and agree upon the price to be paid by Northern for gas to be delivered hereunder during the three-year period beginning with July 1 of the following year.

(b) *By Arbitration.* In the event the parties shall fail to agree upon a price by November 1 of any year in which the price is to be adjusted, then the determination of such price for the three-year period, beginning with July 1 of the following year, shall be made by arbitration in the following manner:

(i) Not later than the following November 15, a Board of Arbitration composed of three arbitrators shall be created, one of whom shall be appointed, and his services and expenses paid for,

by Republic, one of whom shall be appointed, and his services and expenses paid for by North-
[fol. 100] ern and the third to be selected by the two appointed as aforesaid, whose services and expenses shall be paid one-half by Republic and one-half by Northern. In the event that the two arbitrators appointed by the parties hereto cannot agree on the selection of the third, then such third arbitrator shall be appointed by the Judge of the District Court of the United States, in and for the District of Kansas. Any award made by a majority of the three arbitrators shall be final, conclusive and binding upon the parties.

(ii) Said Board of Arbitration shall convene at the earliest practicable date after its selection and shall proceed to consider and determine the price which Northern shall pay for gas for the three-year period beginning with July 1 of the following year (which shall not be less than six cents (6¢) nor more than ten cents (10¢) per thousand cubic feet) and make its award within thirty (30) days thereafter, or not later than the following January 1st, whichever is sooner.

(iii) If the Board of Arbitration so selected shall fail to reach an agreement and make an award within the time specified in (ii) above, said board, at the request of either party, shall be discharged and a new board shall immediately be selected in the same manner prescribed in (i) above and proceed in like manner.

(iv) If after either of the parties shall have selected an arbitrator as provided in (i) above and the other party shall fail to do so, within 30 days after notice of selection, then the single arbitrator so selected may proceed to individually
[fol. 101] determine the price in the same manner and with the same force and effect as if the same had been determined by a complete Board.

SECTION 3. *Price for Gas Delivered During Period of Delay in Adjustment.* If for any reason the determination of the price of gas as provided in Section 2 of this Article shall be delayed beyond the date when such new price would otherwise become effective, Republic shall continue to deliver and Northern shall continue to receive and pay for gas at the price effective during the preceding period, provided, however, that the new price, when finally determined, shall be applied retroactively to all gas delivered from the beginning of the period for which it is to be effective and adjustment made accordingly.

SECTION 4. *Payment for Gas.* On or before the tenth day of each calendar month Republic shall render Northern a statement of the daily volumes of gas delivered hereunder by Republic during the preceding calendar month and shall accompany said statement with supporting meter charts which shall be returned to Republic after examination. Northern agrees to make payment on or before the 25th day of each month for all gas delivered hereunder during the preceding month.

SECTION 5. *Penalty for Failure to Take.* If, in any year ending June 30 during the term of this agreement, Northern shall fail to take the annual volume of gas as provided in this agreement, then within twenty-five (25) days after the end of such year Northern shall pay Republic (at the price in effect hereunder for gas delivered during such year) for the difference between said volume [fol. 102] actually taken and the volume of gas which Northern should have taken during said year.

SECTION 6. *Penalty for Failure to Make Prompt Payment.* If at any time Northern shall fail to pay any amount due to Republic for gas delivered hereunder when the same is due, unless in good faith contested, interest thereon shall accrue at the rate of six per centum (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay, unless in good faith contested, continues for a period of sixty (60) days, Republic may suspend deliveries of gas hereunder, but the exercise of such right shall be in addition to any and all other remedies available to Republic.

SECTION 7. *Payment for Gasoline.* If Northern elects to extract or remove gasoline from the gas delivered by Republic hereunder, Northern agrees to pay Republic therefor an amount equal to one-eighth (⅛) of the net proceeds derived by Northern from the sale of such gasoline after deducting all costs of stripping and marketing including in such costs reasonable depreciation and all other overhead charges exclusive of interest, and Republic agrees to and does hereby indemnify, hold and save Northern harmless from any loss, damage or expense arising out of any claim made to such one-eighth (⅛) of said net proceeds.

Nothing herein contained shall be construed to require Northern to extract or remove gasoline from the natural gas delivered to it hereunder.

SECTION 8. *Taxes.* Republic agrees, if notified thereof by Northern, to indemnify Northern against payment of any [fol. 103] tax now or hereafter imposed by any governmental authority upon the production of said gas, or the operation of wells or gas properties. Northern shall pay all taxes imposed by lawful governmental authority upon the sale and/or distribution by Northern of said gas.

ARTICLE III

MEASUREMENT

SECTION 1. *Unit of Measurement.* The unit of measurement for natural gas delivered hereunder shall be one thousand (1,000) cubic feet of gas computed at a pressure basis of two pounds (2 lbs.) per square inch above fourteen point four pounds (14.4 lbs.) absolute pressure, and at a storage and flowing temperature agreed upon for the purpose of this contract to be sixty degrees (60°) Fahrenheit; corrections to be made for pressures according to Boyle's Law and for actual temperature and specific gravity according to tests as hereinafter provided.

SECTION 2. *Correction Factors.* The factors used in the computation of volumes are as follows:

(a) Actual temperature of the natural gas flowing through the meter or meters shall be obtained by the use of a recording thermometer so installed as to properly record such temperature. The average hourly temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(b) The specific gravity of the natural gas shall be determined once each month by joint tests on days as near the first of the month as practicable. The method of tests shall be by standard balance or [fol. 104] by such other method as shall be agreed upon by the parties.

SECTION 3. *Meters.* Republic, at its expense, shall install and maintain in accurate repair at the point of delivery hereinafter specified, orifice meters of ample size and type, of standard manufacture and with volume and pressure-recording gauges for the accurate measurement of the gas delivered hereunder, and Republic will cause said meters to be read each day.

The meters and respective meter readings and meter charts of Republic shall be at all reasonable times accessible to inspection and examination by Northern. The meters shall be calibrated at least once each fifteen (15) days by and at the expense of Republic but in the presence of a representative of Northern if Northern so elects. Reading, calibration and adjustment of Republic's meters and changing of charts shall be done only by Republic but all data with respect thereto shall at all reasonable times be available to Northern. If upon any test the percentage of inaccuracy shall be two per centum (2%) or more, registrations thereof shall be corrected at the rate of said inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then for a period extending back one-half of the time elapsed since the last date of calibration. Following any test, metering equipment found inaccurate shall immediately be restored by Republic to a condition of accuracy. If for any reason any meter is out of service,

and/or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading there-[fol. 105] of, the gas delivered during the period such meter is out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of Northern's check meter if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation;

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

SECTION 4. *Check Meter.* Northern may, at its option and expense, install and operate check meters to check Republic's meters, but measurement of gas for the purpose of this agreement shall be by Republic's meters only, except in cases hereinabove specifically provided to the contrary. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Republic, but the reading, calibration and adjustment thereof, and changing of charts shall be done only by Northern. Republic hereby grants to Northern the right of ingress to and egress from said check meters at all times for the purpose of installation, operation, repair, reading and/or removal thereof, if located on Republic's property.

SECTION 5. *Protection of Meter Accuracy.* For the purpose of protecting the accuracy of Republic's meters [fol. 106] used for the measurement of gas delivered hereunder and to prevent pulsations of compressors from interfering with accurate measurements, Republic and Northern agree that neither will, without the consent of the other, construct any compressor stations closer than one-half mile from the site upon which said meters are located.

ARTICLE IV

QUALITY

SECTION 1. *Quality of Gas.* Natural gas delivered hereunder shall be sweet gas of merchantable quality conforming to the following specifications:

(1) *Natural Gasoline.* The gas shall be in its natural state as produced, including natural gasoline and all other hydrocarbons therein contained.

(2) *Heating Value.* The heating value of the gas to be delivered hereunder is assumed, but not guaranteed, to have an average total heating value of one thousand (1,000) British Thermal Units (B.T.U.) per cubic foot.

For the purposes of this contract, the basis of British Thermal Unit (B.T.U.) determinations shall be a cubic foot of gas, saturated with water vapor and measured at Thirty inches (30″) of mercury pressure and Sixty (60) degrees Fahrenheit temperature.

(3) *Miscellaneous.* So far as practicable, the gas shall be free from dirt, oil, water, or other foreign substances.

SECTION 2. *Penalty for Failure of Quality.* If in any calendar month the average heating value of the gas de- [fol. 107] livered hereunder shall fall below nine hundred fifty (950) B.T.U. per cubic foot, the price to be paid by Northern to Republic for gas delivered during such month shall be decreased proportionately to the reduction in the heating value below one thousand (1,000) B.T.U. per cubic foot; and Northern shall not be required at any time to receive gas from Republic which has a heating value of nine hundred (900) B.T.U. (or less) per cubic foot.

ARTICLE V

Delivery Pressure and Point of Delivery

Section 1. *Delivery Pressure.* Delivery of natural gas hereunder shall be made by Republic at the highest pressure which can be efficiently maintained by the natural pressure of gas from wells connected to Republic's gathering system, provided, however, that so long as the weighted average field pressure of the wells from which gas is at the time being delivered hereunder shall exceed one hundred fifty (150) pounds, the delivery pressure shall not be less than one hundred (100) pounds to the square inch. In the event that the weighted average field pressure of the wells from which gas is at the time being delivered hereunder shall fall to one hundred fifty (150) pounds (or less) said required delivery pressure may be reduced to not less than fifty (50) pounds per square inch.

Section 2. *Gathering System to be Maintained in Aid of Pressures.* Republic's gathering system shall at all times be maintained, and extensions thereof shall be so designed and maintained, as to deliver gas to Northern through pipe lines of ample size to conform to good practice so that the [fol. 108] pressure drops through said lines from wells to point of delivery to Northern shall be as small as practicable.

Section 3. *Delivery Point.* Delivery of natural gas hereunder shall be made in the Northwest Quarter (NW ¼) of Section 19, Township 33 South, Range 36 West; in Stevens County, Kansas, at the point where the gathering facilities of Republic interconnect with the pipeline system of Northern.

ARTICLE VI

Republic's Right to Audit Certain Records of Northern

Section 1. *As to Volume of Gas Applicable to "Omaha District".* Republic shall have the right to annually audit Northern's records of sales, used gas, and leakage applicable to the "Omaha District," under the provisions of Section 2 of Article I, provided, however, that such audit

shall be made by a Certified Public Accountant at the expense of Republic.

SECTION 2. *As to Gasoline Extracted.* Republic shall have the right of access to such of Northern's records and books, used in the extraction of gasoline as provided in Section 7 of Article II, as may be necessary to audit and determine the correctness of any statement or the amount of any payments which may be made in connection with and incident to the extraction of said gasoline.

[fol. 109]

ARTICLE VII

DEDICATION OF LEASEHOLD ESTATES AND GATHERING FACILITIES

SECTION 1. *Dedication of Gas Acreage.* Republic agrees that from and after the effective date of this contract, all of its gas rights in the gas lands and gas leases set forth and described in Exhibit A, which is hereto attached and made a part hereof (covering approximately 76,800.35 acres, of which 75,000 acres shall at all times during the effective period of this contract constitute the minimum reserve hereunder) shall, subject to the rights of substitution and withdrawal under the terms and limitations hereinafter set forth, constitute as gas reserve which shall be, and is hereby dedicated to the fulfillment of this gas purchase contract; that said Exhibit A correctly describes the gas lands and gas leases in which the gas rights that are dedicated to the fulfillment of this contract exist; and that said gas rights in said gas lands and gas leases described in Exhibit A shall at all time during the life of this contract be impressed with said dedication; provided, however, that:

(a) Republic shall have the right from time to time to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit A (or acreage substituted therefor), except acreage held by producing wells which are now or may hereafter be drilled thereon, upon the following conditions:

(i) That Republic shall first have obtained the written approval of Northern to such substitution;

[fol. 110]

(ii) That any such substituted acreage shall, upon substitution, immediately become impressed with this dedication in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit A (or acreage substituted therefor) for which substitution is made; and

(iii) Republic shall prepare and forward to Northern for execution a written release, in recordable form, which by its terms shall release from the dedication the acreage described in Exhibit A (or acreage substituted therefor) for which other acreage has been substituted.

(b) Republic shall have the right at any time, without the consent of Northern, to withdraw from said dedicated reserve any acreage, except acreage held by producing wells which are now or may hereafter be drilled thereon, contained and described in Exhibit A (or acreage substituted therefor as above provided), if for any reason, in the judgment of Republic, such withdrawal shall be necessary or desirable but only upon the following conditions:

(i) That the total acreage remaining in the dedicated reserve after any such withdrawal shall equal or exceed 75,000 acres; and

(ii) That Republic shall give Northern prior notice in writing of its intention to withdraw from the reserve any of the acreages described in Exhibit A (or acreage substituted therefor as hereinabove provided) setting forth in said notice a particular description of the acreage to [fol. 111] be withdrawn, and prepare and forward to Northern a written release, in recordable form, releasing the acreage so withdrawn from its dedication hereunder, which shall be

immediately executed by Northern and returned to Republic.

(c) If any present or future valid order of any duly constituted regulatory body having authority for any reason prohibits the inclusion of all or any part of the acreage in any unit as now or hereafter constituted in computing the allowable for any well or wells now or hereafter located thereon, the acreage so excluded shall be immediately withdrawn from the dedicated reserve.

SECTION 2. *Title to Developed Acreage.* It is hereby agreed and acknowledged that evidence of Republic's titles to its gas leasehold estates in the various tracts of land described in Exhibit A upon which Republic has drilled gas wells (now connected to the gathering system from which gas purchased hereunder is supplied to Northern) has been furnished to and examined by Northern, and that such titles have been accepted by Northern as good and sufficient for the purposes of this contract.

SECTION 3. *Title to Undeveloped Acreage.* Republic represents that it has good merchantable title to its gas leasehold estates in the various tracts of land described in Exhibit A which at the effective date of this contract have not been developed. If and when Republic drills any well or wells thereon, prior to or promptly after the completion thereof, Republic shall furnish Northern a correct legal description of the tract or unitized area upon which any [fol. 112] such well is located, together with title opinions, copies of gas leases, unit agreements, and other evidence of its title and its right to drill upon and produce gas therefrom. Northern shall without undue delay notify Republic as to whether or not such title or titles is or are acceptable as sufficient for the purposes of this contract. If Northern shall determine that any such title or titles are objectionable and the title defects are not remedied by Republic, Republic agrees that it will substitute therefor and in lieu thereof leasehold estates equally well located and held by title acceptable to Northern. It is agreed,

however, that Northern shall not reject any such title as objectionable on the grounds that the same is subject to:

(a) the lien of current taxes not in default;

(b) existing easements for right-of-way or other surface uses which shall not substantially impair or interfere with the rights of Republic to produce and deliver gas therefrom; or

(c) the lien of any existing mortgage granted by the owner of the fee to the land in which Republic owns the gas leasehold which antedates the gas lease by which Republic acquired its leasehold estate, provided,

(i) That Republic has not assumed such lien or the indebtedness thereby secured, nor any direct or indirect obligation to discharge any or all of the principal indebtedness or the interest charges thereon;

(ii) That the indebtedness secured by such existing [fol. 113] mortgage is not disproportionately large when compared with the value of the fee encumbered before and without reference to any enhancement in such value due to the drilling of any well or wells thereon; and

(iii) That the maturity date of the indebtedness secured by such mortgage as fixed thereby is not less than ninety (90) days subsequent to the date when said title examination is made.

SECTION 4. *Dedication of Gathering System and Appurtenant Facilities.* Republic agrees that from and after the effective date of this contract that part of its natural gas gathering system and appurtenant equipment as presently constructed and located in Stevens and Morton Counties, Kansas, together with all gas wells now drilled, and those which may hereafter be drilled, on the dedicated acreage (set forth in Exhibit A), and the lines used to connect such wells to said gathering system, and all replacements, improvements, additions to and betterments of said gathering

system, wells, and appurtenant facilities, shall be, and the same are hereby, dedicated to the fulfillment of this contract.

It is not intended, and nothing contained in the preceding paragraph shall be construed, to include in such dedication any of the gas wells, and equipment used in connection therewith nor any of the gathering lines or other facilities which Republic may hereafter construct and connect to said dedicated facilities for the delivery of gas to Northern from wells drilled on acreage not in- [fol. 114] cluded in the dedicated reserve, and Republic shall always have the right to connect such wells and lines to the dedicated gathering system. Republic shall also have the right to disconnect such undedicated wells and lines from the dedicated facilities upon notice in writing to Northern of its intention so to do, given at least twelve (12) months in advance of the date of said disconnection.

SECTION 5. *Title to Dedicated Facilities.* Republic warrants that at the effective date of this contract it is possessed of good title to the gathering system, gas wells and all appurtenant equipment, which are dedicated to the fulfillment of this contract under the provisions of Section 4 of this Article VII, free and clear of any and all liens and encumbrances.

SECTION 6. *Dedication to Be Exclusive.* It is contemplated by the parties that the gas acreage dedicated under the provisions of Section 1 of this Article VII and the gathering system and appurtenant facilities dedicated under Section 4 of this Article VII shall at all times during the effective period of this contract be exclusively devoted to and used in the production, gathering and delivery of gas by Republic to Northern in the performance and fulfillment of this contract, and Republic covenants and agrees that it will not sell gas produced from any of the dedicated acreage (so long as the same remains dedicated) to any party other than Northern, and that it will not use, or suffer, or permit, any of the dedicated gathering system and appurtenant facilities to be used in connection with any sale or delivery of gas to any party other than Northern.

[fol. 115] The obligations of Republic hereunder are subject to the reservation of sufficient gas for each of the following purposes:

(a) Drilling operations of Republic in the Hugoton Area for gas for resale by Republic under this agreement; and

(b) To perform the obligations of Republic for delivery of gas to the lessors under the terms of the leases covering lands referred to in Article VII of this agreement.

SECTION 7. *Republic's Obligation to Protect Dedication.* Republic covenants and agrees that if, at any time during the effective period of this contract, it shall cause or permit any mortgage, deed of trust or other lien to be placed upon any or all of the properties which are dedicated to the fulfillment of this contract and described in Sections 1 and 4 of this Article VII, any such mortgage, deed of trust or other lien, when so created, shall specifically refer to this contract, and shall contain a specific provision which expressly subordinates such lien to the dedication of the properties and facilities used in supplying gas to Northern hereunder. Nothing herein contained shall be construed as a prohibition against the right of Republic to pledge the benefits accruing to Republic under this contract.

ARTICLE VIII

GAS SUPPLY AND OTHER PARTICULAR COVENANTS

SECTION 1. *Gas Supply.* The obligation of Northern to take or pay for a minimum of 12,500,000,000 cubic feet of [fol. 116] gas in each annual period of this agreement (July 1st to June 30, inclusive), is conditioned upon Republic having available for Northern from wells connected to its said gathering system and owned by or subject to contract to Republic an open-flow capacity at all times during each such period of not less than 342,465,750 cubic feet of gas per day.

Republic, subject to the foregoing provisions concerning connected open-flow capacity and subject to the conditions

hereinafter stated, shall always have the right to supply sixty per centum (60%) of the aforesaid requirements of Northern up to a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet per year so long as the open-flow capacity of said wells connected to Republic's said gathering system is at all times at least four times the average daily requirement of the four days on which Northern's requirements from Republic shall be the greatest in any thirty-day period, and Republic is able to make delivery of said amounts at the delivery pressure herein provided.

It is understood and agreed that if at any time during the continuance of this contract, the open-flow capacity of said wells of or subject to contract to Republic, connected with Republic's gathering system and available for Northern is less than four times the average daily requirement of the four days on which Northern's requirements hereunder from Republic shall be the greatest in any thirty-day period (meaning by Northern's said requirements hereunder sixty per centum of Northern's total maximum requirements for serving said Omaha District from its said [fol. 117] pipe line, but not exceeding one hundred million cubic feet per day) and if Republic is not able within ninety days thereafter to cause to be developed, maintained and connected with its said gathering system wells owned by or subject to contract to Republic having an open-flow capacity of at least four times the average daily requirement of the four days on which Northern's said requirements hereunder from Republic shall be the greatest in any thirty-day period, then Republic's right to supply sixty per centum of Northern's said requirements shall cease, and in that event Northern is privileged to contract for and purchase an additional supply of gas elsewhere. Northern, however, does agree to take as nearly sixty per centum of its aforesaid requirements from Republic as Northern's conditions and gas purchase obligations contracted by it shall then permit.

In order to determine the open flow capacities of the wells connected to Republic's said gathering system in said Hugoton Area, Republic shall cause said wells to be opened

and tested at intervals to be agreed to by the parties hereto but not more than once in each year; such tests to be made by Republic in the presence of and to the reasonable satisfaction of a representative designated by Northern. Said tests shall be made in accordance with approved modern methods and instruments.

Republic covenants and agrees that it will at all times maintain its gas wells in good condition and to use its best endeavors at all times to maintain a supply of gas adequate to meet Northern's aforesaid requirements under all conditions of this contract.

[fol. 118] SECTION 2. *Northern's Take in Case of Depletion.* Northern agrees that if, through depletion of the supply of gas in the "Hugoton Area", or for other cause beyond its control, Republic is unable to deliver gas in the volumes specified and in the manner provided in this contract, Northern, nevertheless, will continue to purchase gas from Republic and Republic shall continue to sell and deliver gas until the supply in the "Hugoton Area" is depleted or reduced to the extent that Republic, due to such depletion or other cause beyond its control, is unable to deliver at the pressures provided in Section 1 of Article V an average amount of five million (5,000,000) cubic feet per day during a period of six (6) consecutive months, in which event, Northern may at its election cancel this agreement.

SECTION 3. *Parties to Facilitate Performance.* Each of the parties hereto expressly covenants and agrees with the other that it will at all times further and not obstruct the performance of the agreements, covenants and undertakings imposed upon the other party under this contract, and that each of the parties will fulfill and punctually perform and comply with each and all of their respective agreements, covenants and undertakings.

SECTION 4. *Default.* It is covenanted and agreed that if either party shall fail to perform any of the obligations or observe and faithfully keep any of the covenants imposed upon it under and by virtue of this agreement, then in such event the other party may at its option terminate

this agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the [fol. 119] party in default stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the agreement, and if within said period of thirty (30) days the party in default does so remove and remedy said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this agreement shall continue in full force and effect. In case the party in default does not so remedy and remove the cause or causes or does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this agreement shall become null and void from and after the expiration of said period. Any cancellation of this agreement pursuant to the provisions of this Article shall be without prejudice to the right of Republic to collect any amounts then due them for natural gas delivered to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of this agreement.

SECTION 5. *Sale of Properties to be Subject to Contract.* Republic and Northern mutually covenant and agree that if at any time during the effective period of this contract either party shall sell or otherwise dispose of any of its properties which are applicable to and used in the performance of this contract, such sale or disposition shall only be made to a responsible party and specifically sub- [fol. 120] ject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benefits accruing hereunder to the party making the pledge.

ARTICLE IX

Title to Gas

Republic warrants the title to the natural gas sold and delivered to Northern hereunder and that Republic has good right and lawful authority to sell the same as herein provided, and Republic agrees to indemnify and save Northern harmless from any and all suits, claims and liens of whatsoever nature relating to such gas or the title thereto, and agrees that if Republic's title thereto shall at any time be questioned or involved in litigation, Northern shall have the right to withhold payments (without interest) during the period of such litigation or until said title is freed from such question, but only as to the particular property in litigation or dispute, the proceeds payable in respect of the gas produced from such property or until Republic shall furnish to Northern a bond conditioned to save Northern harmless in form and with sureties acceptable to Northern.

ARTICLE X

Liability of Parties

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its re- [fol. 121] spective properties and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to and death of persons, arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party.

Neither party shall be liable to the other for any damages occasioned by failure in any respect to perform this agreement which shall be caused by accident to or breakage of pipe lines, machinery or equipment, fires, floods, storms, weather conditions, strikes, riots, legal interferences, Acts of God or the public enemy, or, without limitation by enumeration, any other cause beyond its reasonable control, provided the party in default shall promptly and diligently

take such action as may be necessary and practicable under the then existing circumstances to remove the cause of the default and resume performance of the contract.

ARTICLE XI

Term of Contract

Subject to earlier termination under the provisions hereof, this agreement shall continue in force from the date hereof for a period of twenty (20) years, and thereafter so long as Republic sha" have gas available for sale to Northern, as and to the extent provided in and subject to the terms and conditions of this agreement.

[fol. 122]

ARTICLE XII

Miscellaneous

Section 1. *Notices.* Any notice or notices given by either party under the terms of this agreement shall be sent by registered mail to the following addresses:

(1) Republic Natural Gas Company
1505 Federal Street
Dallas, Texas

(2) Northern Natural Gas Company
Aquila Court Building
Omaha, Nebraska

Either party may change its address under this Section at any time upon written notice.

Section 2. *Commission Jurisdiction.* This contract is subject to all valid legislation with respect to the subject matter hereof, either State or Federal, and to all valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

Section 3. *Assignment.* This contract, and each of its covenants and obligations, shall inure to the benefit of and be binding upon the successors, trustees and assigns of the respective parties hereto.

SECTION 4. *Former Gas Purchase Contracts.* Republic and Northern mutually agree that this Contract is a simplified restatement of their contractual obligations as "Seller" and "Buyer" respectively, of natural gas from the Hugoton Gas Field, originating under and established by the Gas Purchase Contract dated May 27, 1930, and all agreements supplemental of and amendatory thereto, and as such supersedes and cancels said Contract of May 27, 1930.

[fol. 123]

APPENDIX II

(Exhibit 5)

AMENDMENT

to

NATURAL GAS PURCHASE CONTRACT

AMENDMENT, dated June 30, 1953, by and between REPUBLIC NATURAL GAS COMPANY, a Delaware corporation, herein called "REPUBLIC" and NORTHERN NATURAL GAS COMPANY, a Delaware corporation, herein called "NORTHERN," to the Natural Gas Purchase Contract dated December 21, 1945, between Republic and Northern, hereinafter called the "CONTRACT."

WITNESSETH:

WHEREAS, the Contract was a simplified restatement of the contractual obligations of the parties originating under and established by the Gas Purchase Contract of May 27, 1930, and all agreements supplemental and amendatory thereto; and

WHEREAS, the parties hereto are, as of even date herewith, executing an Amendment to the Natural Gas Purchase Contract dated September 13, 1945, between said parties; and

WHEREAS, the parties hereto are, as of even date herewith, entering into a Preferential Right to Purchase Contract.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual covenants and premises [fol. 124] herein contained, the parties do hereby agree as follows:

PART ONE

The Contract between Republic and Northern shall be amended and supplemented as follows:

A. SECTION 1 OF ARTICLE I SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Sale and Purchase Commitments.* Subject to the terms and conditions and within the limitations hereinafter set forth, Republic agrees to sell and deliver to Northern and Northern agrees to receive, purchase and pay for natural gas in its natural state produced by Republic from the lands described in Exhibit 'A', attached hereto and made a part hereof."

B. THE FOLLOWING SHALL BE ADDED AS SECTION 5 OF ARTICLE I:

"*Section 5. Delivery from Individual Leases.* Northern shall take gas from each of Republic's wells connected to Northern's gathering system with such continuity and in sufficient quantities as to protect the leases upon which such wells are located against termination for non-production, subject to the ability of such wells to so produce."

C. THE FOLLOWING SHALL BE ADDED AS SECTION 6 OF ARTICLE I:

"*Section 6. Limitations of Obligations to Purchase and Deliver.* Subject to the other limitations herein stated the obligations of Northern to purchase and of Republic to deliver the quantities of gas herein provided for shall, at all times, be subject to the ability of Re- [fol. 125] public's wells, which at the time are connected to Northern's gathering system, to produce without waste such quantities of gas when operated in accordance with prudent gas field practice at the delivery capacity at which such wells are permitted by law to produce."

D. SECTION 1 OF ARTICLE II SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Price Until June 30, 1958.* For each One Thousand (1,000) cubic feet of natural gas delivered hereunder during the five (5) year period commencing July 1, 1953, and ending June 30, 1958, Northern shall pay Republic a price of Ten Cents (10¢)."

E. SECTION 2 OF ARTICLE II SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 2. Price After July 1, 1958.* For each One Thousand (1,000) cubic feet of natural gas delivered hereunder during the five (5) year period commencing July 1, 1958, and ending June 30, 1963, and during each subsequent five (5) year period during the remaining term of this contract, Northern shall pay Republic a price to be determined by negotiation and agreement by Republic and Northern as the fair, just and reasonable price to be paid, during each such five (5) year period, for natural gas produced, in the area in which Republic's wells and leases are situated, for interstate transmission; provided, however, the price to be paid hereunder subsequent to July 1, 1958, shall be not less than Ten Cents (10¢).

"Representatives of Republic and Northern shall meet and negotiate as frequently as necessary during the [fol. 126] period March 1 to May 1 of the year in which the price to be paid hereunder is subject to possible change, for determination of the price to be paid during the ensuing five (5) year period.

"In the event the parties hereto shall be unable to agree by May 1 of such year upon such price, then the fair, just and reasonable price to be paid for natural gas produced, in the area in which Republic's wells and leases are situated, for interstate transmission, shall be determined by arbitration. For the purpose of arbitration, Republic and Northern shall each select one arbitrator and the two arbitrators shall select a third. In the event the two arbitrators are unable to agree upon such third arbitrator, such arbitrator shall be selected

by the Senior Federal District Judge for the State of Kansas."

F. SECTION 4 OF ARTICLE II SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 4. Payment for Gas.* Northern agrees to make payment on or before the 25th day of each month for all gas delivered hereunder during the preceding month."

G. SECTION 7 OF ARTICLE II SHALL BE DELETED.

H. SECTION 8 OF ARTICLE II SHALL BE RENUMBERED AS SECTION 7 OF ARTICLE II.

I. SECTION 2 OF ARTICLE II SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 2. Computation of Volume of Gas Delivered.* The volumes of gas delivered to Northern hereunder as measured at pipeline pressures and temperatures shall be computed by Northern from the meter records and converted into the unit of measurement specified [fol. 127] in Section 1 of this Article III, in accordance with the applicable provisions of the American Gas Association's 'Gas Measurement Committee Report No. 2,' dated May 6, 1935, as presently effective, or hereafter revised, and any duly authorized amendments thereto; provided, however, that Reynold's number, expansion and supercompressibility factors shall be excluded in all such computations and the gas shall be assumed to obey Boyle's Law, unless by valid order, applicable hereto, issued by the State Corporation Commission of the State of Kansas, or its successor in jurisdiction, it is required that corrections be made on account of such factors in computing the volumes of gas delivered hereunder, in which event corrections for such factors in accordance with such order shall be made in such computations. For the purpose of such computations, the *atmospheric pressure* is assumed and agreed to be 13.2 pounds per square inch absolute at the place of measurement.

"The *temperature* of the gas flowing through the meter, or meters, is hereby assumed and agreed upon, for the purposes of this contract, at 60 degrees Fahrenheit; provided, however, that Northern, at its option, may at any time install a recording thermometer to record the temperature of the gas flowing through the meter, or meters, in which event the arithmetic average of the recorded hourly temperatures of the flowing gas shall thereafter, as long as said thermometer is installed, be used in correcting the volume delivered hereunder to the unit of measurement specified in Section 1 of this Article III.

"The *specific gravity* of the gas shall be determined by joint tests at interyals of approximately six (6) months duration. The method of test shall be by stand- [fol. 128] ard gravity balance and the last such gravity so obtained shall be used in the determination of the volume delivered hereunder."

J. SECTION 3 OF ARTICLE III SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 3. Meters.* The gas to be delivered hereunder shall be measured by adequate meters of standard type installed, operated and maintained by Northern at its sole expense, at or near the points of delivery hereunder, on sites to be provided by Northern. When wells are delivering gas, such meters shall at all times be in service and recording except when measurement equipment is being tested or repaired. Such facilities of Northern, which are installed subsequent to the date of this agreement, shall be constructed in accordance with the applicable provisions of the American Gas Association's 'Gas Measurement Committee Report No. 2,' dated May 6, 1935. Republic agrees that such facilities in place as of the date of this contract are of satisfactory design.

"Such meters shall be tested once a month by Northern and shall at all reasonable times be subject to check, test and inspection by representatives of Republic in the presence of representatives of Northern.

Upon Republic's request, Northern shall mail or deliver to Republic for checking and calculation all meter charts and other data or records used in the measurement of gas delivered hereunder subject to return by Republic within thirty (30) days after the receipt thereof, after which return the charts and records shall be kept by Northern for a period of five (5) years for the use of both parties.

"The meters and respective meter readings and meter charts of Northern shall be at all reasonable times [fol. 129] accessible to inspection and examination by Republic. Reading, calibration and adjustment of Northern's meters and changing of charts shall be done only by Northern, but all data with respect thereto shall at all reasonable times be available to Republic. With respect to wells which are not delivering gas, such meters shall be left in service and meter charts shall be changed at least once each month; provided, that Northern shall not be required to wind meter clocks when gas is not passing through the meters. If, upon any test, the percentage of inaccuracy shall be two per centum (2%) or more, registrations thereof shall be corrected at the rate of said inaccuracy for any period which is definitely known and agreed upon, but in the event the period is not definitely known and agreed upon, then for a period extending back one-half of the time elapsed since the last date of calibration. Following any test, metering equipment found inaccurate shall immediately be restored by Northern to a condition of accuracy. If, for any reason, any meter is out of service, or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, the gas delivered during the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

"(a) By using the registration of check meters if installed by either party hereto and accurately registering;

"(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation;

[fol. 130]

"(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately."

K. SECTION 4 OF ARTICLE III SHALL BE DELETED.

L. SECTION 5 OF ARTICLE III SHALL BE DELETED.

M. SECTION 1 OF ARTICLE V SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Delivery Pressure.* Delivery of natural gas hereunder from each of Republic's wells shall be made at the highest pressure which can be efficiently maintained by the natural pressure of each such well and Northern shall maintain in its pipeline at the delivery points hereunder such pressures as will permit delivery of the total volume of gas agreed to be purchased under this Contract; provided, however, that Northern shall not be required to maintain a pressure in its pipeline system at the point of delivery of gas from any well of Republic lower than seventy-five per cent (75%) of the arithmetic average of the 72-hour shut-in wellhead gauge pressure of all of Republic's wells delivering gas hereunder; provided, further, however, that Northern shall not be required to maintain a pressure in its gathering system at the point of delivery of gas from any well of Republic below seventy-five (75) pounds per square inch gauge pressure."

N. SECTION 2 OF ARTICLE V SHALL BE DELETED.

O. SECTION 3 OF ARTICLE V SHALL BE RENUMBERED AS SECTION 2 OF ARTICLE V AND AMENDED TO READ AS FOLLOWS:

"*Section 2. Points of Delivery.* Delivery of natural gas hereunder shall be at the point Northern connects [fol. 131] its gas-gathering pipelines to the side-gate

valve of Republic, installed on the wellhead of each of Republic's wells."

P. SECTION 2 OF ARTICLE VI SHALL BE DELETED.

Q. SECTION 1 OF ARTICLE VII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Dedication of Gas Acreage.* Republic represents that it is either the owner of oil and gas leases or the owner of the mineral rights under all of the gas lands set forth and described in Exhibit 'A', which is attached hereto and made a part hereof. Republic agrees and covenants that it will, at its own cost and expense, maintain all such leases and mineral rights in full force and effect, insofar as such maintenance is within the control of Republic, until said leases and rights are released from the provisions of this agreement as hereinafter provided.

"Republic agrees that from and after the effective date of this Contract, all of its gas rights in the gas lands and gas leases set forth and described in Exhibit 'A', which is hereto attached and made a part hereof, shall constitute a gas reserve which, together with Republic's wells and appurtenant facilities, shall be and are hereby exclusively dedicated to the fulfillment of this Contract and that this Contract is hereby expressly made a covenant running with said land and leases. Republic covenants and agrees that it will not sell gas produced from any of the dedicated acreage, so long as the same remains dedicated, to any party other than Northern; that said Exhibit 'A' correctly describes the gas lands and gas leases in which the gas rights that are dedicated to the fulfillment of this Contract exist; and that said gas rights in said [fol. 132] gas lands and gas leases described in Exhibit 'A' shall at all times during the life of this Contract be impressed with said dedication; provided, however, that Republic shall have the right to use gas produced from said lands for:

"(a) Drilling, reworking or remedial operations of Republic on acreage dedicated to this Contract; and

"(b) Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any well hereafter drilled on such acreage; and

"(c) To perform the obligations of Republic for delivery of gas to the lessors under the terms of the present leases covering lands covered hereunder."

R. SECTION 2 OF ARTICLE VII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 2. Title to Acreage.* It is hereby agreed and acknowledged that evidence of Republic's titles to its gas leasehold estates in the various tracts of land described in Exhibit 'A', upon which Republic has drilled gas wells, has been furnished to and examined by Northern, and that such titles have been accepted by Northern as good and sufficient for the purposes of this Contract."

S. SECTIONS 3, 4, 5, AND 6 OF ARTICLE VII SHALL BE DELETED.

T. SECTION 7 OF ARTICLE VII SHALL BE RENUMBERED AS SECTION 3 AND SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 3. Republic's Obligation to Protect Dedication.* Republic covenants and agrees that if, at any [fol. 133] time, it shall cause or permit any mortgage, deed of trust or other lien to be placed upon any or all of the properties which are dedicated to the fulfillment of this Contract, any such mortgage, deed of trust or other lien, when so created, shall specifically refer to this Contract, and shall contain a specific provision which expressly subordinates such lien to the dedication of the properties and facilities used in supplying gas to Northern hereunder. Nothing herein contained shall

be construed as a prohibition against the right of Republic to pledge the benefits accruing to Republic under this Contract."

U. THE FOLLOWING SHALL BE ADDED AS SECTION 4 OF ARTICLE VII:

"*Section 4. Gathering System and Facilities.* Northern shall prudently operate and maintain in good operating condition the existing gas-gathering system which is connected with the side-gate valves of Republic installed on the wellheads of each of Republic's wells. Republic agrees that such facilities in place, as of the date of this Contract, are of satisfactory size and design.

"In an effort to provide a pipeline connection with each well of Republic, situated on acreage covered hereunder, hereafter drilled by Republic on said acreage with reasonable promptness following the completion thereof, Northern agrees to diligently endeavor to secure any governmental authorizations which may be required for the acquisition of such materials as may be required for the construction of said line and to diligently endeavor to secure such materials.

"At the earliest practicable date following Northern's acquisition of acceptable right-of-way agreements, any [fol. 134] requisite governmental authorizations, and suitable and necessary materials, Northern, at its own expense, shall provide and construct, and thereafter operate and maintain, a suitable gas-gathering pipeline to each of such wells in accordance with approved field practices.

"Northern shall not be obligated to connect any well of Republic which does not have the ability to produce at a daily average rate of 200,000 cubic feet or more of natural gas per day at the end of seventy-two (72) hours' flow against a wellhead back-pressure equal to 80% of the shut-in wellhead pressure of such well; provided, however, that if Northern elects not to connect to any such well, Northern nevertheless shall, upon Republic's request, accept gas from any such well of

smaller capacity if Republic shall bear the cost of installing and operating all facilities necessary to measure and deliver the gas from such well into Northern's system at the nearest practicable point on such system.

"Except with respect to replacement wells for presently existing wells, Northern shall not be obligated to connect to:

"(a) Any well which Republic hereafter drills to a depth of 3,000 feet or less which has less than 480 acres attributed thereto;

"(b) More than one well producing from the same common source of supply on acreage theretofore attributed to production from such common source of supply.

"With respect to all wells which Northern is not obligated to connect, if Republic elects to connect any such well, it shall bear the cost of installing and oper- [fol. 135] ating all facilities necessary to measure and deliver the gas from any such well into Northern's system at the nearest practicable point on such system and Northern shall purchase gas therefrom in accordance with all the applicable terms and conditions of this Contract."

V. THE FOLLOWING SHALL BE ADDED AS SECTION 5 OF ARTICLE VII:

"*Section 5.* The gas wells connected under this Contract shall be equipped, operated and maintained without cost to Northern, in accordance with approved practices. In the event any of Republic's wells delivering gas hereunder should produce liquids to an extent whereby the production of gas is substantially impaired, then Republic agrees to take such steps as a reasonably prudent operator would take to rectify such condition. Northern shall have the right at all reasonable times to require Republic to inspect, test and blow said wells in the presence of a representative of Northern.

"In the event Northern desires to do any work on its facilities directly engaged in accepting delivery of gas hereunder from any of Republic's wells, or desires to have Republic do any work on Republic's wells, Northern agrees to so notify Republic. Northern agrees to have its field representatives report to Republic's field representatives any observed irregularity of well performance which would indicate the need for blowing, testing or remedial work on any of Republic's wells which are subject to this agreement, provided, however, that neither Northern nor its representatives assume any responsibility or liability for failure to observe any such irregularity. In the event Republic de-
[fol. 136] sires to do any testing or remedial work on any of its wells, Republic agrees to so notify Northern. Republic shall make available to Northern such information regarding drilling records and well equipment as Northern may reasonably request."

W. THE FOLLOWING SHALL BE ADDED AS SECTION 6 OF ARTICLE VII:

"*Section 6. Release of Acreage.* In the event there should accrue to Northern the right to cease the purchase of gas from any well of Republic, or the right not to purchase gas from any replacement well of Republic or any new non-replacement well of Republic, for any of the reasons elsewhere stated in this agreement, and Northern shall elect to exercise such right, Northern shall so notify Republic and Republic shall have sixty (60) days following the date of such notice within which, at its option, to rectify the condition giving rise to the cause of Northern's election to not purchase gas from such well. In the event Republic does not rectify the condition giving rise to Northern's election not to purchase gas from any such well within said time limit, and Northern does not elect to accept gas without the condition being rectified, Northern and Republic shall execute a release of said well and the acreage attributable thereto, for the particular horizon from which

the well is then capable of producing, from all of the provisions of this agreement.

"In the event there should accrue to Republic the right to cease the delivery of gas from any well and Republic should elect at its option not to deliver gas from any of its wells for any of the reasons elsewhere stated in this agreement, Republic shall so notify [fol. 137] Northern and Northern shall have sixty (60) days following the date of said notice within which, at its option, to rectify the condition giving rise to the cause of Republic's election to not deliver gas from such well. In the event Northern does not rectify the condition giving rise to Republic's election not to deliver gas from any such well within said time limit, and Republic does not elect to deliver gas without the condition being rectified, Northern and Republic shall execute a release of said well and the acreage attributable thereto, for the particular horizon from which the well is then capable of producing, from all of the provisions of this agreement.

"In the event there has accrued to Republic the right to cease the delivery of gas from any such well, and if Republic shall elect to surrender its leases attributed to any such well, Republic agrees to notify Northern in writing of such contemplated action. Upon request in writing by Northern given within fifteen days after receipt of Republic's notice, Republic shall assign to Northern all of Republic's right, title, and interest in such leases. If Republic shall own the mineral rights under the acreage attributable to any such well, then Republic shall grant Northern a gas lease thereon which shall be in the customary form and for a primary term of one (1) year. If there should be a gas well or wells located on any such leasehold or mineral interest, Northern shall pay Republic the reasonable salvage value of the casing and other equipment in such well or wells."

X. SECTION 1 OF ARTICLE VIII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Gas supply.* The obligation of Northern to take or pay for a minimum of 12,500,000,000 cubic feet

[fol. 138] of gas in each annual period of this agreement (July 1st to June 30, inclusive), is conditioned upon Republic having available for Northern an open-flow capacity at all times during each such period of not less than 342,465,750 cubic feet of gas per day.

"Republic, subject to the foregoing provisions concerning connected open-flow capacity and subject to the conditions hereinafter stated, shall always have the right to supply sixty per centum (60%) of the aforesaid requirements of Northern up to a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet per year so long as the open-flow capacity of said wells is at all times at least four times the average daily requirement of the four days on which Northern's requirements from Republic shall be the greatest in any thirty-day period, and Republic is able to make delivery of said amounts at the delivery pressure herein provided.

"It is understood and agreed that if at any time during the continuance of this Contract, the open flow capacity of said wells of Republic available for Northern is less than four times the average daily requirement of the four days on which Northern's requirements hereunder from Republic shall be the greatest in any thirty-day period (meaning by Northern's said requirements hereunder sixty per centum of Northern's total maximum requirements for serving said Omaha District from its said pipeline, but not exceeding one hundred million cubic feet per day) and if Republic is not able within ninety days thereafter to cause to be developed and maintained wells having an open-flow capacity of at least four times the average daily requirement of the four days on which Northern's said requirements here- [fol. 139] under from Republic shall be the greatest in any thirty-day period, then Republic's right to supply sixty per centum of Northern's said requirements shall cease, and in that event Northern is privileged to contract for and purchase an additional supply of gas elsewhere. Northern, however, does agree to take as nearly sixty per centum of its aforesaid requirements from

Republic as Northern's conditions and gas purchase obligations contracted by it shall then permit.

"In order to determine the open-flow capacities of said wells in said Hugoton Area, Republic shall cause said wells to be opened and tested at intervals to be agreed to by the parties hereto but not more than once in each year; such tests to be made by Republic in the presence of and to the reasonable satisfaction of a representative designated by Northern. Said tests shall be made in accordance with approved modern methods and instruments.

"Republic shall have full control of the operations and maintenance of its gas wells; provided, however, Northern shall have the right to regulate the rate of flow of gas from each well to the extent necessary to enable it to purchase the aggregate volume of gas herein agreed to be purchased. Republic covenants and agrees that it will at all times maintain its gas wells in good condition and to use its best endeavors at all times to maintain a supply of gas adequate to meet Northern's aforesaid requirements under all conditions of this Contract."

Y. SECTION 2 OF ARTICLE VIII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 2. Northern's Take in Case of Depletion.* Northern agrees that if, through depletion of the supply [fol. 140] of gas in the 'Hugoton Area,' or for other cause beyond its control, Republic is unable to deliver gas in the volumes specified and in the manner provided in this Contract, Northern, nevertheless, will continue to purchase gas from Republic and Republic shall continue to sell and deliver gas until the supply in the 'Hugoton Area' is depleted or reduced to the extent that Republic, due to such depletion or other cause beyond its control, is unable to deliver an average amount of five million (5,000,000) cubic feet per day during a period of six (6) consecutive months, in which event, Northern may, at its election, cancel this agreement."

Z. SECTION 4 OF ARTICLE VIII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 4. Default.* It is covenanted and agreed that if either party shall fail to perform any of the obligations or observe and faithfully keep any of the covenants imposed upon it under any by virtue of this agreement, then in such event the other party may at its option terminate this agreement by proceeding as follows:

"The party not in default shall cause a written notice to be served on the party in default stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; thereupon, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the agreement, and if within said period of thirty (30) days the party in default does so remove and remedy said cause or [fol. 141] causes or fully indemnifies the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this agreement shall continue in full force and effect. In the event the party in default does not so remedy and remove the cause or causes or does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this agreement shall become null and void from and after the expiration of said period. Any cancellation of this agreement pursuant to the provisions of this Article shall be without prejudice to the right of Republic to collect any amounts then due them for natural gas delivered to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of this agreement."

AA. SECTION 5 OF ARTICLE VIII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 5. Sale of Properties to Be Subject to Contract.* Republic and Northern mutually covenant and

agree that if at any time during the effective period of this Contract either party shall sell or otherwise dispose of any of its properties which are applicable to and used in the performance of this Contract, such sale or disposition shall only be made to a responsible party and specifically subject to this Contract; provided, however, that nothing herein contained shall be construed to prevent either party from pledging, subject to this Contract, all or any portion of its property as security under any mortgage, deed of trust or other similar lien, or from pledging this Contract or any benefits accruing hereunder to the party making the pledge."

[fol. 142] AB. ARTICLE IX, "TITLE TO GAS," SHALL BE AMENDED TO READ AS FOLLOWS:

"Republic warrants the title to the natural gas sold and delivered to Northern hereunder and that Republic has good right and lawful authority to sell the same as herein provided, and Republic agrees to indemnify and save Northern harmless from any and all suits, claims and liens of whatsoever nature relating to such gas or the title thereto, and agrees that if Republic's title thereto shall at any time be questioned or involved in litigation, Northern shall have the right to withhold payments (without interest) of the proceeds payable in respect of the gas produced from the particular property in litigation or dispute during the period of such litigation or until said title is freed from such question or until Republic shall furnish Northern a bond conditioned to save Northern harmless in form and with sureties acceptable to Northern."

AC. ARTICLE X, "LIABILITY OF PARTIES," SHALL BE AMENDED TO READ AS FOLLOWS:

"Each of the parties hereto assumes full responsibilty and liability in the maintenance and operation of its respective properties and for the acts or omissions of their respective employees, agents or contractors, and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all

damages, claims or actions, including injury to and death of persons, arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party or any act or omission of any agent, employee or contractor of the indemnifying party.

[fol. 143] "Neither party shall be liable to the other for any damages occasioned by failure in any respect to perform this agreement which shall be caused by accident to or breakage of pipe lines, machinery or equipment, fires, floods, storms, weather conditions, strikes, riots, legal interferences, acts of God or the public enemy, or, without limitation by enumeration, any other cause beyond its reasonable control, provided the party in default shall promptly and diligently take such action as may be necessary and practicable under the then existing circumstances to remove the cause of the default and resume performance of the Contract."

AD. ARTICLE XI, "TERM OF CONTRACT," SHALL BE AMENDED TO READ AS FOLLOWS:

"Subject to earlier termination under the provisions hereof, this Agreement shall continue in force from the date hereof for a period of twenty (20) years and thereafter so long as natural gas can be produced hereunder in commercial quantities from any well located on the acreage subject to this contract; provided, however, that whenever gas can not be produced by Republic, or transported by Northern to its main transmission system, from any such well in profitable quantities, Republic may elect to cease to deliver, or Northern may elect to cease to purchase, gas hereunder, as the case may be, but only with respect to such well and the acreage attributable thereto, for the particular horizon from which the well is then capable of producing, by giving the other party at least sixty (60) days prior written notice of such election."

[fol. 144] AE. SECTION 1 OF ARTICLE XII SHALL BE AMENDED TO READ AS FOLLOWS:

"*Section 1. Notices.* Any notice or notices given by either party under the terms of this agreement shall be sent by registered mail to the following addresses:

(1) Republic Natural Gas Company
311 South Akard Street
Dallas, Texas

(2) Northern Natural Gas Company
2223 Dodge Street
Omaha, Nebraska

"Either party may change its address under this Section at any time upon written notice."

AF. SECTIONS 4 AND 5 OF ARTICLE XII SHALL BE RENUMBERED AS SECTIONS 6 AND 7 AND THE FOLLOWING ADDED AS SECTION 4:

"*Section 4.* To the extent that Republic is authorized to do so, Republic hereby agrees to grant and assign to Northern all requisite easements and rights-of-way over, across and under any of the lands described in Exhibit 'A' and the right to perform thereon any acts necessary or convenient for carrying out the terms of this Contract."

AG. THE FOLLOWING SHALL BE ADDED AS SECTION 5 OF ARTICLE XII:

"*Section 5. Restatement of Acreage.* Either party hereto shall have the right to request a restatement or revision of Exhibit 'A', but not oftener than once a year, and when same shall have been completed and agreed to by both parties hereto, it shall replace the Exhibit 'A' then attached to and made a part of [fol. 145] this Contract, and shall then be considered as the Exhibit 'A' referred to herein and made a part hereof."

PART TWO

There is attached hereto and made a part hereof a revised Exhibit "A" wherein are described not only all of the gas lands and gas leases presently dedicated to the Contract but also approximately 7,700 acres of additional gas lands and gas leases not heretofore subject to said Contract and which by this amendment are dedicated to it. All references in said Contract to Exhibit "A" shall henceforth be referable to the revised Exhibit "A" attached hereto.

PART THREE

Any and all amendments to the Contract, other than this present amendment, are hereby cancelled and of no further force and effect.

In Witness Whereof, the parties hereto have executed this Amendment.

"Northern"	"Republic"
Northern Natural Gas Company	Republic Natural Gas Company
By /s/ J. F. Merriam President	By /s/ W. H. Wildes President
Attest /s/ B. H. Harper Secretary	Attest /s/ Floyd G. Miller Asst. Secretary
Date Executed 6-30-53	Date Executed 6-30-53
(Seal)	(Seal)

[fol. 146] Acknowledgment of Service of Appellant's Abstract of Record and Waiver of Proof Thereof (omitted in printing).

[fol. 153]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,128

NORTHERN NATURAL GAS COMPANY, Appellant,

v.

STATE CORPORATION COMMISSION, Appellee.

SYLLABUS BY THE COURT

1. GAS—*Powers of Corporation Commission—Ratable Taking by Purchaser.* The provisions of G. S. 1959 Supp., 55-703 are considered and held to be sufficient to give the Corporation Commission powers to pass rules to insure the fair and equitable taking of natural gas from a common source, and in such an attempt to provide for the ratable taking of natural gas by a purchaser.

2. SAME—*Order of Commission—As to Ratable Taking by Purchaser—Validity.* It is further decided that such an order as described in the first paragraph hereof did not impair the obligation of a contract possessed by the purchaser or impinge upon other constitutional rights of the purchaser.

3. SAME—*Order of Commission—As to Ratable Taking by Purchaser—Federal Power Commission's Authority Not Impaired.* It is also further decided that the order of the Commission as to the ratable taking of natural gas concerns only the production and gathering of gas and in no way impairs the control of the Federal Power Commission over the transportation of natural gas in interstate commerce under the federal Natural Gas Act, 15 U. S. C. A. §717 *et seq.*

Appeal from Finney district court; ROLAND H. TATE, judge. Opinion filed June 10, 1961. Affirmed.

Mark H. Adams, II, of Wichita argued the cause, and Mark H. Adams, Charles E. Jones, William I. Robinson, J.

Ashford Manka, Clifford L. Malone, John S. Seeber and Floyd E. Jensen of Wichita; Lawrence I. Shaw, F. Vinson Roach, and Patrick J. McCarthy of Omaha, Nebraska; Ray H. Calihan, Logan N. Green, Daniel R. Hopkins and Ray H. Calihan, Jr., of Garden City were with him on the briefs for the appellant.

[fol. 154] Charles C. McCarter, general counsel, argued the cause, and S. F. Fleeker, assistant general counsel, was with him on the briefs for the appellee.

OPINION—Filed June 10, 1961

The opinion of the court was delivered by

JACKSON, J.: The appellant Northern Natural Gas Company began a judicial review action in the court below to review an order of the Corporation Commission directing it to take gas ratably from all gas wells in the Kansas Hugoton Gas Field to which its lines were connected including the gas wells owned by Republic Natural Gas Company with which company it had a special contract as to the purchase of gas. The district court affirmed the order of the Commission, and the appellant brings the matter to this court on an appeal from the district court's decision.

Throughout the remainder of this opinion we shall refer to the above parties as "Northern," "Republic," and the "Commission."

For many years Northern and Republic have been parties to a contract under which Northern agreed to take and pay for a sufficient amount of natural gas to supply 60 percent of the supply needed by Northern to satisfy the needs of its customers in a certain area in Iowa and Nebraska. The exact location of this area in Nebraska and Iowa is not important, but it is referred to in the briefs as the Omaha District. This contract covers only some 144 wells owned by Republic and in the briefs this group of wells is referred to as the "Republic A" wells.

The above contract has been before this court in the former case of *Northern Natural Gas Co.* v. *Republic Natural Gas Co.*, 172 Kan. 450, 241 P. 2d 708, in which opinion a more detailed account of the contract may be found.

There can be no question that Northern is engaged in the interstate transportation of natural gas by pipe line for sale in states other than Kansas, as defined in the Natural Gas Act. In the last case mentioned, the question at issue was the amount of gas which could be lawfully produced under the above contract and regulations of the Commission. The important part of the syllabus of the case just cited reads: "An operator of gas wells . . . as to the amount of gas he can produce from the wells, is governed by the allowables for such wells made by the commission for the time in question and not by slightly less than three times such allowables."

Another case which is connected with this same contract between Republic and Northern is that of *Republic Natural Gas Co.* v. *State Corporation Commission*, 173 Kan. 172, [fol. 155] 244 P. 2d 1196. Those intergsted in an account of the manner of establishing proration allowables for gas wells in the Hugoton field are directed to the opinion in the last mentioned case. The case affirmed the Commission in making an order refusing to reinstate canceled "underages" of certain gas wells owned by Republic. The canceled underages had been canceled according to the rules of the Commission applying to the entire Hugoton field.

As early as 1938, Northern had begun to purchase additional gas supply in the Hugoton field in addition to the Republic "A" wells. In 1949, Northern entered into a gas purchase contract with Cities Service Oil Company. Thereafter, Northern purchased other gas supply and now owns some 125 gas purchase contracts.

These gas purchase contracts cover a total of some 1,100 gas wells in the Hugoton field. Such contracts contain provisions for the ratable taking of gas between all gas wells with the exception that Republic "A" wells are specifically excepted from the provision for ratable taking and are given preference where the demand for gas does not equal the allowables for all of the wells. A copy of such contracts is contained in the abstract but need not be reproduced in this opinion.

Northern's position is quite clearly and forcefully stated in the following quotation taken from its brief:

> "As Northern has interpreted its commitments under its gas purchase contracts in such field, when Northern's market requirements from the field are less than the total allowables assigned to the wells connected to Northern, Northern's contractual commitment (as previously interpreted by the Court) under the Republic "A" contract is first deducted from Northern's gas requirements and allocated to the Republic "A" wells. The balance of Northern's requirements is then allocated ratably to all other wells to it connected in such Field."

Northern further tells us that from 1944 until 1958, Northern was largely able to take ratably from all wells connected with its lines, but it seems to concede that during 1958, it took gas from Republic "A" wells at a much greater rate than from the rest of the wells connected to its gathering lines. In January, 1959, the Cities Service wells connected to Northern's lines had a monthly allowable of 2,084,874 Mcf. They had an underage of 11,411,727 Mcf., and 123,711 Mcf. of these underages were canceled by the Commission under its general rules as being underproduced in excess of six times the January current allowable. Northern's other connections aside from Republic "A" wells had a [fol. 156] January current allowable of 9,309,441 Mcf. and a total underage of 48,604,070 Mcf. The net status of these wells was 522.09 percent underproduced, and they suffered cancellation of 409,393 Mcf. of the aforementioned underage.

In contrast, Republic "A" wells had a current January allowable of 2,674,390 Mcf. and an overage of 114,858 Mcf. They were overproduced 4.29 percent in that particular month.

Northern makes no claim that it would not have been possible to take gas ratably from all of its wells. It only claims that the contract with Republic gives it the right to prefer Republic "A" wells.

On May 27, 1959, the Commission on its own motion took notice of the above situation and issued an order to Northern to show cause why it should not take ratably from the wells to which it is connected in the Hugoton field in

Kansas. The hearing was set first on June 26, 1959, but later continued to July 24, 1959, and the order appealed from was issued October 7, 1959.

At the hearing before the Commission, an expert witness testified as follows:

> ". . . I have expressed an opinion that there is drainage occurring. Our studies indicate that if the wells are produced with the same percent of allowable production or of net allowable production, then the wells will be ratable, and correlative rights will be protected. There are two ways of accomplishing this currently in the Hugoton Field. One is to raise the total (of) Northern Natural's takes up until they are ratable with the Republic 'A' group, and second would be to lower Republic 'A' by curtailing their production, so they will become ratable with the balance of the field."

We do not read the record to show that there is any contention but that drainage was occurring, and that the underproduced wells were losing the right to produce gas from the common source of supply to the great damage of the owners of the wells in the loss of their correlative rights.

While the members of this court make no claim to be experts in the science of the production of natural gas, we believe that the court may take judicial notice of the fact that where natural gas is within the earth in one common source and is under pressure, if one gas well is allowed to take gas, this will result in the pressure being lowered around the vicinity of this gas well so that the gas in the common source will tend to drain or rush to the vicinity of the well taking gas. The result will be that the other wells in the common field or source will be able to produce much less gas and the owners of such wells will have suffered a definite loss.

[fol. 157] It should be noted at this time that shortly after the issuance of the order of the Commission dated October 7, 1959, directed only to Northern and which is appealed from in this present proceeding, the Commission, after due notice and hearing, issued a general rule ap-

plicable to all takers of natural gas from the Hugoton gas field requiring that all takers of gas take ratably from the wells to which they are connected. Northern's appeal from that general order is to be found in *Northern Natural Gas Co.* v. *State Corporation Commission,* 188 Kan. ——, —— P. 2d ——.

In attempting to sustain its position in the present case, Northern first contends that our state Natural Gas Act does not provide for ratable taking; that the act applies only to producers of gas; that Northern is a purchaser of gas and a natural gas company engaged in interstate commerce. It refers to section 55-703, G. S. 1959 Supp., and stresses the first part of the section which refers to producers. But Northern has ignored the latter part of the section wherein the following language is found:

> "The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. In promulgating rules, regulations and formulas, to attain such results the commission shall give equitable consideration to acreage, pressure, open flow, porosity, permeability and thickness of pay, and such other factors, conditions and circumstances as may exist in the common source of supply under consideration at the time, as may be pertinent."

In Summers on *Oil and Gas,* Vol. 1A, sec. 103.1 p. 139, wherein the eminent author is dealing with ratable taking of oil and gas, that part of section 55-703 set out above is noted and the author concludes as follows:

> "The Kansas gas conservation act authorizes the state corporation commission to so regulate the taking of gas from any common source of supply as to prevent inequitable and unfair taking. This act does not expressly state that purchasers of gas in the common source of supply may be required to take ratably from

all wells with which their pipe lines may be connected, *but unless the commission has such authority it cannot prevent inequitable and unfair taking.*" (Italics supplied.)

It will be noted that the Commission is authorized to make rules and regulations for the purpose of accomplishing the results to which the Commission is directed; and that such rules and regulations have the force and effect [fol. 158] of law when filed in the office of the revisor of statutes (G. S. 1949, 77-410).

In search of Commission's Rule 82-2-101, which has been so filed, we find the following: "Taker: See purchaser." And in the same rule, purchaser is defined as follows:

> "Purchaser shall mean any person who directly or indirectly purchases, transports, takes, or otherwise removes production to his account from a well, lease or common source of supply. Purchaser is usually considered to be the person holding the division order." (Italics supplied.)

We believe Northern is mistaken in arguing that the above statute and the rules made thereunder do not apply to a purchaser of natural gas. We are only more convinced that the legislature had this in mind, by the fact that natural gas cannot be produced unless someone is ready to buy it, it cannot be stored in a tank on the lease. Therefore, as Professor Summers says, the object of the quoted provisions of section 55-703 cannot be accomplished unless the taker or purchaser can be controlled. We believe the statute is sufficient to reach Northern.

We note that in its brief, the Commission has directed attention to certain language in the opinion of *Republic Natural Gas Co.* v. *State Corporation Commission*, supra. While the whole opinion in that case is in line with what we are now deciding, the precise question now before us was not there involved.

The second objection to the validity of the order of the Commission appealed from is sweeping in its coverage and reads as follows:

"II

"Said order as approved by the trial court is arbitrary, unreasonable and discriminatory, has no relation to proration or conservation of gas, burdens interstate commerce and takes appellant's property and contract rights, all in violation of the commerce clause, the contract clause and the fourteenth amendment to the federal constitution, and the Kansas Bill of Rights, sections one, two and eighteen, and section seventeen, article two of the Kansas constitution."

Despite the sweeping indictment of the order, Northern really seems to simply argue that the contract has established the correlative rights of the parties, and that therefore, the state is powerless to prevent waste and drainage of gas as long as the monthly allowables are not unlawfully exceeded.

We would direct attention to a provision of the contract upon which Northern relies, and which reads:

[fol. 159] "SECTION 2. *Commission Jurisdiction.* This contract is subject to all valid legislation with respect to the subject matter hereof, either State or Federal, and to all valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction."

We cannot agree with the argument that the monthly allowable is the whole story. Certainly, the wells attached to Northern and apart from Republic "A" are losing gas to Republic "A" and possibly to any other taker who is taking gas at a greater rate than Northern is allowing gas to be produced from these wells.

It would seem that ratable taking in the production of natural gas has been late in coming before this court for approval. The Supreme Court of Oklahoma upheld an order of the Corporation Commission of that state providing that a purchaser of natural gas must take gas from a producer having no contract with the purchaser and must also take ratably from the aforesaid producer: see *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 203

Okla. 35, 220 P. 2d 279, affirmed on appeal, 340 U. S. 179, 95 L. Ed. 190, 71 S. Ct. 215.

It would appear to us that the opinions of the Supreme Court of Oklahoma and of the Supreme Court of the United States in the above case foreclose any of Northern's arguments in the case at bar. There was a matter of contract inovlved in the Peerless case. Cities Service undoubtedly thought they had a right to take gas from the wells from which it had contracted to buy gas, and that it had no duty to contract with Peerless. But it was held that the state might prevent drainage of gas from the Peerless wells despite the contracts held by Cities Service.

Certainly, in view of the above quoted provision of the contract between Northern and Republic, there has been no impairment of the obligation of contract in this case or any other impairment of constitutional right.

Lastly, Northern contends that the order of the Commission impinges upon the authority of the Federal Power Commission under the Natural Gas Act, 15 U. S. C. A. § 717 *et seq.*

As above noted, we are quite well aware that Northern is engaged in the transportation and sale of natural gas in interstate commerce by pipe line. We do not believe, however, that the matters dealt with in this case affect interstate transportation or sale in any respect. That is, the matters dealt with in this case pertain to "production and gathering of natural gas." (15 U. S. C. A. § 717(b)). [fol. 160] It should again be emphasized that the Commission's order did not direct Northern as to the amount of gas which it should take, it only directed that the amount Northern needs shall be taken ratably from all the gas wells which Northern serves. Northern agrees that it could do this, but says it would have to give up its contracted preference to Republic "A" wells. Everyone would be happy if Northern would take the entire monthly allowable from all of the wells served. Northern says that in the near future it believes that it will be able to do this very thing.

We believe that the state may regulate the production of natural gas and the gathering of the same to the extent

necessary to insure that the gas under one owner's land will not be drawn off by his neighbor, and that his neighbor cannot plead a contract with a third person to give him a right to drain gas from his neighbor.

All of the matters contained in Northern's brief have been fully considered, and we find that the order appealed from must be affirmed. It is hereby so ordered.

SCHROEDER, J. (dissenting): The Commission by its order directed to Northern assumes it has authority under G. S. 1949, 55-703, as amended, to control and regulate *purchases* of gas by Northern, engaged in the interstate transportation of gas. This, in my opinion, is beyond the authority of the statute.

What the Commission in the instant case (No. 42,128), and in the companion case (No. 42,127), purports to do is to set up one proration system, having application to *purchasers*, within a proration system controlling *production* under the Basic Order for the Hugoton Gas Field adopted on the 21st day of March, 1944, *which was designed and declared by the Commission to "accomplish the purposes for which article 7, chapter 55, General Statutes of Kansas for 1935 was enacted."* (Basic Proration Order for the Hugoton Gas Field, paragraph m.) (Emphasis added.)

By the Commission's order dated October 7, 1959, Northern was directed to take gas ratably from its connections in the Kansas Hugoton Gas Field (Case No. 42,128), and by the Commission's order promulgating Rule 8-2-219 (Case No. 42,127), all companies *purchasing gas* from a common source of supply under proration by the Commission are required to take gas in proportion to the allowables from all the wells to which each is connected.

The Basic Proration Order for the Hugoton Gas Field, [fol. 161] as amended, and in effect at times material, by a system of proration, controls the *production* of gas in the Hugoton Field. The end sought in fixing *production quotas* was to enable each developed lease to currently produce its daily allowable so that ultimately such developed lease would have an opportunity to produce approximately the amount of gas which underlies such lease.

It recognized the available production of the wells in the Hugoton Field was far in excess of the market demand, and found:

> "f. That since there exists disproportionate *production* from the wells and leases in said field which impairs the correlative rights of many of the owners of developed leases, it is necessary for the Commission to take jurisdiction and to prescribe *regulations for the production of gas* from said wells and others that may be hereafter completed in said field to the end that each person, firm, or corporation *having the right to drill into and produce natural gas from said field may take therefrom only such proportion of the amount that may be produced therefrom without waste* as will permit each well or developed lease *to produce* ultimately at least approximately the amount of gas underlying the land or lease on which such well is located and *currently produce proportionately* with the other wells in said fields . . ." (Emphasis added.)

The basic order adopted a formula which was said to have a reasonable relation to the prevention of waste, to the prevention of inequitable and unfair *production of gas from the common source of supply*, and to the prevention of unreasonable discrimination in favor of one *producer* in said field and against another *producer* therein (paragraph m). The order directed that there be held two market demand hearings for each year (paragraph n) to determine the market demand for natural gas from the Hugoton Field for the next succeeding proration periods, and directed the preparation and promulgation of a new schedule of *production* allowable for the wells in said field, *based upon the determination made as a result of the market demand hearing* (paragraph o).

The record presented discloses that pursuant to paragraph "n" of such basic proration order, two market demand hearings for each year were and are held by the Commission, and market demand orders were and are issued for six-month periods (October 1 to March 31 and April 1 to September 30), in addition to which *monthly*

proration or allowable orders were and are issued for each month spreading and allocating the market demand and fixing the monthly allowables assigned to each of the producing gas wells in said field.

The record discloses that for the entire period from April, 1944, through February, 1958, there were no im- [fol. 162] portant differences between the ratable purchases by Northern from Republic "A" wells and other wells to which it was connected. The difference in ratio was less than one times the January allowable for essentially the entire period.

However, in the spring of 1958, a wide difference in Northern's purchases appears between the Republic "A" wells and the others.

The reason stated to the Commission and assigned by Northern for this difference is:

> ". . . First, as the Commission is well aware, *allowables granted by the Commission to the field have exceeded the total field production by approximately 130 billion cubic feet* and the wells connected to Northern, other than the Republic 'A' wells, have become substantially underproduced. Second, is the fact that Northern has been seriously delayed in expanding its system into new markets for gas by reason of the failure of the Federal Power Commission to issue the necessary Certificates of Public Convenience and Necessity. . ." (Emphasis added.)

Testimony on behalf of Northern was that given sufficient time it would be able to conduct its operations in such a way that the taking from the wells to which it was connected would be ratable. This was based *on the assumption that the Commission's future allowable assignments will be realistic,* and on the further assumption that the necessary expansion certificates will be issued to Northern by the Federal Power Commission.

It must be recognized that Northern's Republic "A" contract is subject to all valid legislation with respect to gas purchases in the Hugoton Field, either state or federal, and to all valid present and future orders, rules and regu-

lations of duly constituted authorities having jurisdiction. (See, *Northern Natural Gas Co. v. Republic Natural Gas Co.*, 172 Kan. 450, 478, 241 P. 2d 708.)

The testimony on behalf of Northern was that as far as facilities were concerned, it was not physically impossible for Northern to take gas ratably from the Republic "A" wells and all other wells connected to its system. The evidence further disclosed that if the markets were sufficient so that Northern could take the current allowables from the Republic "A" wells and also take the current allowables from all other wells connected to it, then Northern's take would be ratable as between all wells connected to its system. In other words, *when the market conditions are at the same level as the allowables then the same return of take would exist between the Republic "A" wells and all other wells to which Northern was connected.*

[fol. 163] Theoretically, when these facts are considered, in the light of the Basic Proration Order for the Hugoton Field and the statute pursuant to which it was promulgated, if the Commission is not derelict in its duty *to correlate allowable production with the market demand*, all wells of necessity would be *produced* ratably without supplementation by any order or rule to control the *purchasers* of gas in the Hugoton Field. Taking into consideration the entire history of Northern's purchases of gas in the Hugoton Field starting from April, 1944, the above theory seems to have practical application.

It is readily apparent that any effort to control the purchase of gas, which of necessity on the facts before the court in the instant case is limited to those wells connected to Northern's gathering system and pipe line, cannot protect the correlative rights of all producers from the common source of supply in accordance with the mandate of the statute. It fails to take into consideration those wells, potentially capable of production, which have no market for their gas, and the differential in markets among the various purchasers of gas from the common source of supply. Therefore, if the Commission fails to exercise its power *to correlate production with demand*, it cannot ac-

complish the mandate of the statute, and resort to a method which requires *the purchasers* of gas in the Hugoton Field to take ratably from the wells to which each is connected is little more than a futile gesture.

It must be assumed the legislature was aware of the situation regarding the production and development of gas in this state when 55-703, *supra*, was first enacted in 1935, and when subsequent amendments were made thereto, but it did not expressly authorize the Commission to require purchasers of gas in the common source of supply to take ratably from all wells to which their pipe line was connected. It undoubtedly felt the control of production was sufficient to accomplish the purposes for which the statute was enacted.

An analysis of G. S. 1949, 55-703, as amended, (now G. S. 1959 Supp., 55-703) will disclose the Commission has no jurisdiction over purchases of gas by an interstate pipe line company. Our gas conservation law is Chapter 55, Article 7, and is entitled "PRODUCTION AND CONSERVATION OF NATURAL GAS." The applicable section of this statute is 55-703, *supra*. In pertinent part it reads:

[fol. 164] "[1] Whenever the available *production* of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, *then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced* without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said

common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. [2] The commission shall so *regulate the taking of natural gas from any and all such common sources of supply* within this state as to prevent the *inequitable or unfair taking from such common source of supply* by any person, firm or corporation and to prevent unreasonable discrimination in favor of any one common source of supply as against another and *in favor of or against any producer* in any such common source of supply . . ." (Emphasis and numbers added.)

In both cases the Commission relies upon the above quoted portion of the statute marked [2], categorically stating this is the source of its jurisdiction.

An examination of this portion of the statute, and those portions thereof which have been italicized, makes it clear that *the taking referred to,* over which the Commission is to have regulatory jurisdiction under certain circumstances, *is from the common source of supply.* As applied to the Kansas Hugoton Gas Field the common source of supply would be the so-called "Hugoton Pay Zone," or the producing horizon described as gas encountered at an average depth of from 2700 to 2800 feet below the surface within the Kansas Hugoton Gas Field. Therefore, the taking referred to is not a taking from the wellhead, or from a producer, or from the end of a gathering system owned by the producer some miles from the wellhead, but the taking referred to is from the common source of supply.

It must be noted the phrase "person, firm or corporation" used in both the first and second portions of the quoted statute, is defined in the first portion as one "*having the right to produce natural gas.*" (Emphasis added.) It is difficult to believe the legislature intended that on the one hand such expression referred to a producer, and on the other hand to a purchaser.

[fol. 165] The court in *White Eagle Oil Co.* v. *State Corporation Comm.*, 168 Kan. 548, 214 P. 2d 337, quotes a portion of the first sentence of the section of the statute

in question which it construes as being the statutory mandate or declaration of public policy with regard to *production*.

While the Commission's general rules and regulations, in Rule 92-2-101, under the definition of "taker" refers the reader to the definition of "purchaser," the rules do not give the Commission jurisdiction to regulate purchases, unless such authority is found in the statute. In other words, if the statute does not confer power upon the Commission to regulate the purchases of gas, it cannot confer such power upon itself by the adoption of a rule.

The State Corporation Commission of Kansas has a limited jurisdiction. It possesses no powers not given it by statute. (*Bennett* v. *Corporation Commission*, 157 Kan. 589, 596, 142 P. 2d 810; *Manhattan Co.* v. *Commissioner*, 297 U. S. 129, 80 L. Ed. 528, 56 S. Ct. 397; 24 Am. Jur., Gas and Oil, § 144, p. 628; and see, *Texas & Pacific Ry. Co.* v. *U. S.*, 289 U. S. 627, 77 L. Ed. 1410, 53 S. Ct. 768.)

On those several occasions over the life of the statute when this court has been called upon *to construe* 55-703, *supra*, and its companion sections, it has consistently construed such act as a statute giving authority to regulate production, and not purchases. (*Northern Natural Gas Co.* v. *Republic Natural Gas Co.*, supra; and *Republic Natural Gas Co.* v. *State Corporation Commission*, 173 Kan. 172, 244 P. 2d 1196.)

In *Republic Natural Gas Co.* v. *State Corporation Commission*, supra, the court in substance said that the continuing duty on the part of the Commission was to cause the *production* of gas from any well to be ratable, in accordance with the provisions of the statute and the basic order; and that no operator or producer had any vested right to produce from any well more gas in any month than was assigned it as its allowable, the entire matter of *producing gas* from a well being subject to the provisions of the basic order and the statute. In other words, under 55-703, *supra*, to "take" gas means to "produce" gas. The essence of the gas conservation statute is that it operates on the operator or producer of the well.

In construing our oil conservation statute, which is very similar to our gas conservation statute, this court in *State*

ex rel., v. *Sinclair Pipe Line Co.*, 180 Kan. 425, 304 P. 2d 930, stated:

> "The statutes with reference to waste are G. S. 1949, 55-601 to 55-608, inclusive. The production of crude oil in such a manner as to constitute waste is pro- [fol. 166] hibited by G. S. 1949, 55-601, and made a crime by G. S. 1949, 55-607. *The statute refers only to production.* Sinclair, as we have demonstrated, is engaged strictly in interstate transportation of crude oil. The Oklahoma statute on waste is almost identical to ours. In speaking of that statute, the supreme court of the United States held in *Champlin Rfg. Co. v. Corporation Commission*, 286 U. S. 210, 76 L. Ed. 1062, 52 S. Ct. 559:
>
> "'It is clear that the regulations prescribed and authorized by the Act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products.'" (pp. 437, 438.) (Emphasis added.)

It is significant to note that the oil statute, G. S. 1949, 55-603, states in part: "... *any person having the right to drill into and produce* oil therefrom may *take* therefrom ..." (Emphasis added.) (See, Two Cases on Conservation, Vol. 6, J. B. K. p. 149, by H. H. Lesar.)

It is apparent that heretofore the Commission itself has always construed the statute in question as one authorizing the regulation of production, and not purchases. In paragraph "f" of the Basic Proration Order for the Hugoton Gas Field the Commission found "The present and past *production* from the wells in said field is and has been *inequitable* and *unfair*." (Emphasis added.) At another place in paragraph "f" the Commission found "it is necessary for the Commission to take jurisdiction and to prescribe regulations for the *production* of gas." (Emphasis added.)

In *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279, the Oklahoma Supreme Court directed Cities Service, a purchaser of gas to take gas ratably from other wells in a given field. From this decision the

Commission argues that ratable take statutes do in fact apply to purchasers as well as producers.

It must be noted in the state of Oklahoma the legislature has enacted a *common purchasers' statute*, requiring that purchasers of gas shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and prohibits such common purchasers from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons. (52 Okl. St. Ann. § 23.) Also, the legislature of Oklahoma in its conservation of oil and gas *statute* has defined the term "taker" to include a purchaser of natural gas as follows:

> "(i) The term 'Taker' shall include any person, who, acting alone, or jointly with any person or persons, is directly or indirectly purchasing or transporting by any means whatsoever or otherwise removing oil or gas from any common source of supply in this State. Laws 1947, p. 326, § 1." (52 Okl. St. Ann. § 86.1.)

[fol. 167] It is clear the Kansas Corporation Commission cannot look to the statutes of other states, or to the judicial construction of such statutes, for power to control purchasers of gas in Kansas under the provisions of G. S. 1949, 55-703, as amended.

Both the statute and the Basic Proration Order for the Hugoton Gas Field purport to give the Commission jurisdiction over the regulation of production only. In other words, the "taking" which must be ratable under the statute and the basic order is the *production* of gas from the common source of supply, not the *purchasing* of gas. By a mandatory direction from the legislature the Commission has jurisdiction over production, so that such production will neither be inequitable nor unfair. The "Order" (Case No. 42,128) and the "Rule" promulgated by the Commission (Case No. 42,127) here under review which is directed to purchasers, rather than operators or producers, and seeking to regulate the purchase of gas, or the manner of making such purchases after production has ceased, rather than to regulate the production itself, are in my opinion invalid

because they go beyond the jurisdiction conferred upon the Commission by the statute.

[fol. 168] [File endorsement omitted]

No. 42,128

IN THE SUPREME COURT OF THE STATE OF KANSAS

NORTHERN NATURAL GAS COMPANY, a corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

Appeal from the District Court of Finney County, Kansas.
Honorable Roland H. Tate, Judge

NORTHERN NATURAL GAS COMPANY'S MOTION FOR REHEARING—Filed June 30, 1961

Appellant, Northern Natural Gas Company, after a careful review and consideration of this Court's opinion, decision and judgment entered in the above captioned appeal, does hereby respectfully move this Honorable Court to set aside its said opinion, decision and judgment, entered and filed herein on June 10, 1961, to grant appellant a rehearing thereof and upon such rehearing or otherwise to set aside the purported ratable take order directed at appellant, and modify its judgment herein by construing G.S. 1949, 55-703, as amended by the legislature in 1959, as exclusively a statute relating to the production of gas and not to the purchase thereof, so that such construction by this Court will not result in a conflict with or impinge upon or invade the jurisdiction of the Federal Power Commission under the provisions of the Natural Gas Act, 15 U.S.C.A. 717, thereby avoiding the consequences resulting [fol. 169] from any attempt by the State of Kansas to rega-

late in any manner sales of gas in interstate commerce for resale and natural gas companies, parties to such sales.

The real issue here is whether our Kansas statute, G.S. 1949, 55-703, as amended,[1] in addition to requiring *ratable production* of gas from the common source of supply within reasonable and practical tolerances also requires *ratable purchases* of gas.[2] There would be no question about the jurisdiction of the Kansas Commission to require producers under such law to produce ratably and thereby accomplish the purposes of the statute. Obviously, if producers are restricted in their production so as to require it to be ratable with other producers within reasonable and practical tolerances, then there is no problem with respect to whether or not any purchaser purchases ratably. While the Kansas Commission thus could legally and within its jurisdiction require ratable production, if the statute is construed, as it is by the present decision of the Court in this case, to reach over into and attempt to control sales of such gas in interstate commerce for resale, then immediately the effect of the Court's decision is to transgress on the jurisdiction of the Federal Power Commission.

The resulting issue accordingly before this Court under this motion deals directly with a clash of jurisdiction be- [fol. 170] tween the Federal Power Commission and the Corporation Commission of Kansas, which conflict can be avoided by confining the Kansas Corporation Commission's jurisdiction exclusively to the production of gas, and when

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[1] Appellants respectfully call the Court's attention to the fact that the statute referred to, construed and quoted from in the majority opinion was G.S. 1949 55-703. This statute, however, was amended in 1959 and at all times material hereto the statute with which the Court should be concerned is G.S. 1959 Supp. 55-703.

[2] Despite the statement by the Court to the contrary, (See page 5 of the opinion) Northern has never contended that the statute is not a ratable take statute. Northern's position, however, was and is that clearly the statute was intended to give the State Corporation Commission jurisdiction only over the production and conservation of natural gas and not over the purchaser after production has ended. The Court's error in this respect was in interpreting the word "taker" as being synonomous with "purchaser".

such is done ratable production and ratable purchasing of gas (within reasonable and practical tolerances) will of necessity result.

The order in this case (Abs. 68-70) is specifically directed to Northern Natural Gas Company, which the Court concedes in its opinion is a purchaser and transporter of natural gas in interstate commerce for resale from the Kansas Hugoton Field. The Court takes the position that the order in question is a valid exercise of the police powe of the state on the ground that it pertains to the production and gathering of natural gas and by reason thereof comes within the exemption provisions of the Natural Gas Act. There is a fundamental anomaly here because the record is clear that Northern is not a producer of gas but is rather only a purchaser and transporter of such gas.

In the next to the last paragraph of the Court's opinion it is said:

> "We believe that the state may regulate the *production* of natural gas and the gathering of the same to the extent necessary to insure that the gas under one owner's land will not be drawn off by his neighbor, and that this *neighbor* (Republic) cannot plead a contract with a *third person* (Northern) to give him a right to drain gas from his *neighbor*. (Abutting landowner.)"

No one can justify an objection to this statement of the Court because it does pertain to the production and conservation of natural gas under G.S. 1949, 55-703, as it was amended by the legislature in 1959. Objection does, however, stem from the fact that this Court has applied the statute not to the production of gas, but rather to the sale of gas, such sale being for transportation and resale in interstate commerce.

[fol. 171] This Court, appellant believes, should not be led astray and allow itself to be inveigled by the Corporation Commission into this wholly unnecessary clash with the provisions of the Natural Gas Act. There appears to appellant to be no sound reason for construing this statute in question to authorize the Commission to regulate the sale of gas when regulation of production would suffice

and accomplish the objective of the legislature under the statute as heretofore construed by this Court. *Northern Natural Gas Co.* v. *Republic Natural Gas Co.*, 172 Kan. 450, 241 P. 2d 708.

The Court bases its decision on the construction applied to the statute by the author of Summers on Oil and Gas, Vol. 1A, Section 103.1, Page 139, upon Corporation Commission rule 82-2-101, which deals exclusively with the oil conservation statutes and pertains in no way to the gas production and conservation statutes, and upon the case of *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 203 Oklahoma 33, 222 P. 2d 279, as affirmed on appeal, 340 U. S. 179, 95 L. Ed. 190.

In so doing the Court completely overlooks and disregards the fact that the authorities relied upon by it in no way give consideration to the plain provisions of the Natural Gas Act, 15 U.S.C.A. 717. In Section 717 (a), it is provided:

> "• • • it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that *federal regulation* in matters relating to the transportation of natural gas and the sale thereof in interstate • • • commerce is necessary in the public interest."

Paragraph (b) of this same section provides:

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate consumption for domestic, commercial, [fol. 172] industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply • • • to the production or gathering of natural gas."

It is to be noted that the plain provisions of the Natural Gas Act concern and relate to "federal regulation" and "shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of

natural gas for resale * * * and to natural gas companies engaged in such transportation or sale, * * * ".

This Court completely overlooks the use of the words "federal regulation". Apparently this Court felt that the cases heretofore before this Court relating to the *fixing* of the price of natural gas sold in interstate commerce for resale are not here applicable. The word "regulate" certainly does not have such a limited meaning as to be applicable only to the *fixing* of a price for natural gas.

The Supreme Court of the United States, in *Dayton-Goose Creek R. Co.* v. *United States*, 263 U.S. 478, 68 L.Ed. 398, had occasion to consider the meaning of the word "regulate" as it pertained to the interstate commerce clause. In the opinion Mr. Chief Justice Taft, speaking for the Court, said:

> "It was insisted in the two cases referred to, and it is insisted here, that the power to *regulate* interstate commerce is limited *to the fixing of reasonable rates* and the prevention of those which are discriminatory and that, when these objects are attained, *the power of regulation is exhausted.*"

The Court then said:

> "This is too narrow a view of the commerce clause. *To regulate in the sense intended is to foster, protect, and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety.*" (Citing many cases)

[fol. 173] That the word "regulate" is limited to the fixing of a price for natural gas sold in interstate commerce is certainly too narrow a construction of such word. The word "regulate" is much broader and covers the sale of gas in all its aspects when such sale is a sale in interstate commerce for resale. The Supreme Court of the United States, in *Natural Gas Pipe Line Co. of America* v. *Panoma Corp.*, 349 U.S. 44, 99 L.Ed. 866, gave the Natural Gas Act no such narrow construction. While the case pertained to

the fixing of a minimum price to be paid for such gas the Court in the opinion said:

> "We held in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 98 L.Ed. 1035, 74 S.Ct. 794, that *such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one.*
>
> "We disagree with the contention of the appellees that Cities Service Gas Co. v. Peerless Oil and Gas Co., 340 U.S. 179, 95 L.Ed. 190, 71 S.Ct. 215, and Phillips Petroleum Co. v. Oklahoma, 340 U.S. 190, 95 L.Ed. 204, 71 S.Ct. 221 are applicable here. *In those cases we were dealing with constitutional questions and not with the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases.* Reversed." (Emphasis supplied)

It is, therefore, clear from the Panoma case that the jurisdiction of the Federal Power Commission under the Natural Gas Act is not merely limited to the fixing of the price of gas sold in interstate commerce for resale, but includes the regulation of the whole sale thereof in all respects.

This Court in this case has not drawn the line of demarcation between the production of gas, and the sale and purchase thereof. In other words, this Court in this case is doing exactly the same thing that it attempted to do in *Cities Service Gas Co.* v. *State Corporation Commission*, 180 Kan. 454, 304 P. 2d 528, which the Supreme Court [fol. 174] of the United States summarily reversed in a one sentence per curiam opinion, 355 U.S. 391, 2 L.Ed. 2d 355. On pages 461-462 of the state court opinion, this Court endeavored to justify the Commission price order on the ground that it pertained to the production and gathering of natural gas and not to the purchase or sale thereof. After the Supreme Court of the United States had reversed this Court's decision, this Court, in *Cities Service Gas Co.* v. *State Corporation Commission*, 184 Kan. 540, 337 P. 2d

640, had occasion again to consider Commission's minimum gas price fixing order in face of the decision of the United States Supreme Court holding such order to be a nullity. In the latter case this Court, in reviewing the order for a second time, clearly demonstrated that at the time of its first decision it was not unmindful of the decision of the United States Supreme Court in *Natural Gas Pipe Line Co.* v. *Panoma Corporation*, supra, nor was it not cognizant of the warning given by the United States Supreme Court in the case of *Cities Service Gas Co.* v. *Peerless Oil and Gas Co., supra.* On page 543 of the opinion this Court said:

> "Despite all of these warnings and considerations, this court in its former decision in this case felt that in view of the provisions of the Natural Gas Act, the state still had a right to use the fixing of a minimum price at the wellhead *as a means of conservation in the production of natural gas.*". (Emphasis supplied.)

On the next page of the opinion (544) this Court further said:

> "In reviewing this holding, we understand the Supreme Court of the United States to hold that on January 1, 1954, the State of Kansas had *no jurisdiction to regulate* the price of natural gas as it came out of the well since that price would affect interstate commerce and the jurisdiction of the Federal Power Commission." (Emphasis supplied.)

Certainly this Court should not again allow the Corporation Commission, even though it is an arm of the state government, to draw this Court into deciding that such Commission has any jurisdiction of any kind or character over the sale of natural gas in interstate commerce for resale. [fol. 175] See *Saturn Oil & Gas Company* v. *Federal Power Com'n.*, 250 F. 2d 61, certiorari denied, 355 U.S. 956, 2 L. Ed. 2d 532, where wellhead sales in the Kansas Hugoton Field were involved. There the Court when considering the contended for exemption under the "production and gathering" clause in the Natural Gas Act defined production as "the act of bringing forth gas from the earth" and gathering as

"the act of collecting gas after it has been brought forth from the earth" (page 64). The Court in holding that the wellhead sales involved were sales in interstate commerce for resale stated that until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt, *however*, if there is such a sale the jurisdiction of the Federal Power Commission applies. The Court thus concluded that such sales at the wellhead in the Kansas Hugoton Field were exclusively in the jurisdiction of the Federal Power Commission.

It seems to this appellant that this court should fully recognize the full impact of the United States Supreme Court's decision in the Phillips case. To appellant that Court made it clear that not only the sale and purchase of gas in interstate commerce for resale were under the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act, but also that the producer as well as the purchaser with respect to such sale were "natural gas companies", as defined in the Natural Gas Act.

In *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 677, 98 L.Ed. 1035, 1045, the Supreme Court of the United States said:

> "They (petitioners) contend, however, that the affirmative grant of jurisdiction of such sales (sales in interstate commerce for resale) in the first clause of Section 1 (b) (Natural Gas Act) is limited by the negative second clause of the section. In particular, the conten- [fol. 176] tion is made that the sales by Phillips are a part of the 'production or gathering of natural gas' which the Commission's jurisdiction expressly does not extend.
>
> "We do not agree. In our view, the statutory language, the pertinent legislative history and the past decisions of this Court all support the conclusion of the Court of Appeals that Phillips is a 'natural gas company' within the meaning of that term as defined in the Natural Gas Act, and *that its sales in interstate commerce of natural gas for resale are subject to the jurisdiction of and regulation by the Federal Power Commission.*"

On pages 681 and 682 the Court further said:

> "The cases discussed above supply a ready answer to the determination of the Commission and also to petitioner's suggestion that 'production or gathering' should be construed to mean the 'business' of production and gathering, *with the sale of the product considered as an integral part of such 'business'*. We see no reason to depart from our previous decisions, especially since they are consistent with the language and legislative history of the Natural Gas Act. Rather, we believe that the legislative history indicates a Congressional intent to give the Commission (FPC) jurisdiction over the rates of all wholesalers of natural gas in interstate commerce, whether by pipe line company or not and whether occurring before, during or after transmission by an interstate pipe line company." (Emphasis supplied.)

It, therefore, is clear that the Supreme Court of the United States, in interpreting the provisions of the Natural Gas Act, has squarely determined that the Federal Power Commission, under the Act, has *exclusive jurisdiction to regulate sales of natural gas in interstate commerce for resale, regardless of where the sale occurs* and the specific provisions of Section 1 (b) of the Act covering production or gathering of natural gas do not give the state authority or jurisdiction to regulate the sale of such gas or the purchaser thereof on the ground that same is a part of production or gathering.

In *Deep South Oil Company of Texas* v. *Federal Power Commission* (C.A. 5, 1957), 247 F. 2d 882, the Phillips case [fol. 177] was considered. It was there said, at pages 888 and 889 of the opinion:

> "The petitioner alternatively contends, however, that regardless of whether the sales in question are sales in interstate commerce, the transactions fall within the clause of Section 1 (b) of the Act which specifically excepts from the Commission's jurisdiction the regulation of '* * * the production or gathering of natural gas.' We do not at all agree, but on the contrary think

that our observations in Interstate Natural Gas Company v. Federal Power Commission, 156 F. 2d 949, 951, supply a ready answer to this contention. There, in speaking of Section 1 (b), we said:

"'(The Act) is very simply and plainly written: After stating what it shall apply to, it then states what it shall not apply to. Under familiar rules of construction, a negation in or exception to a statute will be construed so as to avoid nullifying or restricting its apparent principal purpose and the positive provisions made to carry them out. * * * Here the statute was drawn to regulate, it picked out for inclusion "sale in interstate commerce of natural gas for resale for ultimate public consumption". * * * Unnecessarily perhaps but in the interest of making clear that the act gave jurisdiction only over sales and transportation of the kind described in it, it used language removing from any doubt that the Commission was not to have jurisdiction over properties used for production and local distribution or the activities of production and gathering. It did this by expressly providing that the act should not apply "to the facilities used for such (i.e. local) distribution or to the production or gathering of natural gas".'

"The exemption of production and gathering merely means that the physical activities, facilities and properties used by petitioner in the production and gathering of natural gas are not within the commission's power of regulation. *However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate.*' (Emphasis supplied.)

In short the Court points out very clearly that the exemption in the Natural Gas Act does not apply to sales of natural

gas in interstate commerce which are consummated before the gas has been gathered or processed. There is absolutely [fol. 178] nothing sacrosanct with respect to orders of the Corporation Commission, particularly when such orders are directed to a purchaser of gas where the sale to it is made in interstate commerce for resale of which the State Commission has no jurisdiction.

Why then should this Court construe G.S. 1949, 55-703, as amended, to sustain an order of the Corporation Commission directed to a party and covering subject matter of which it has no jurisdiction when it could readily construe such statute as applying only to the production of gas which is under the jurisdiction of the Corporation Commission of this State?

The statute, coupled with the provisions of the basic proration order for the Kansas Hugoton Field, is fully adequate to justify this Court to determine that the Corporation Commission of this State under G.S. 1949, 55-706, 55-708 and 55-709, may enforce the ratable production of gas in the Kansas Hugoton Field or any other field within its jurisdiction without the necessity of any special or general order requiring purchasers of gas to take and purchase gas ratably.

Mr. Justice Schroeder, in the first paragraph of his dissenting opinion in this case, challenges this Court's attention to the distinction existing between production of gas and the purchase and sale thereof by there saying:

> "The Commission by its order directed to Northern assumes it has authority under G.S. 1949, 55-703, as amended, to control and regulate purchases of gas by Northern, engaged in the interstate transportation of gas. This, in my opinion, is beyond the authority of the statute."

Mr. Justice Schroeder could well have used in lieu of the word "statute", supra, the word "state". Apparently as disclosed by the dissenting opinion, Mr. Justice Schroeder preferred to base his dissent on a construction of G. S. 1949, 55-703 as amended, rather than to see this [fol. 179] Court clash again with the Supreme Court of the

United States and the plain provisions of the Natural Gas Act as interpreted and construed by that Court.

If this Court would hold the Commission ratable take order invalid since the statute, as amended, obviously applies only to the production and not to the sale of gas in interstate commerce for resale, its decision would conform not only to the objective of the legislature but to the subsisting provisions of the basic proration order for the Kansas Hugoton Field as fully explained by Mr. Justice Schroeder in his dissenting opinion. Where, however, the Court applies the statute as it has done in this case to the sale and purchase of gas, the Court runs squarely afoul of the provisions of the Natural Gas Act.

From the record in this case, the operations of Northern Natural Gas Company are solely those incident to the purchase of gas for transportation in interstate commerce for resale subject to the jurisdiction of the Federal Power Commission. Northern only becomes a "purchaser" because of a "sale" having been made to it. The Federal Power Commission jurisdiction extends to and covers that sale. Such sales are the first sales after production has ended. The true objective of our statute relating to "production and conservation of gas" can be fully met and accomplished by the State Commission's regulation of production. For all of the reasons and by virtue of the authorities heretofore referred to, rehearing should be granted herein, the Court's previous decision set aside, and decision rendered holding invalid the Kansas Commission's Order complained of.

Respectfully submitted,

Mark H. Adams, Charles E. Jones, William I. Robinson, J. Ashford Manka, Clifford L. Malone, Mark H. Adams, II, John S. Seeber, Floyd E. Jensen, Joe Rolston, 503 Colorado-Derby Building, Wichita, Kansas; Lawrence I. Shaw, F. Vinson Roach, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska; Ray H. Calihan, Logan N. Green, Daniel R. Hopkins, Ray H. Calihan, Jr., 118 West Pine, Garden City, Kansas, Attorneys for Appellant, Northern Natural Gas Company.

[fol. 180] Acknowledgment of Receipt of Appellant's Motion for Rehearing and Waiver of Formal Proof of Service Thereof (omitted in printing).

[fol. 181]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,128

NORTHERN NATURAL GAS COMPANY, Appellant,

v.

STATE CORPORATION COMMISSION, Appellee.

OPINION DENYING MOTION FOR REHEARING—
Filed August 31, 1961

Appeal from Finney district court; ROLAND H. TATE, judge.

(For original opinion of affirmance see ante p. 355, 362 P. 2d 599.)

[fol. 182] The opinion of the court was delivered by

JACKSON, J.: In its motion for rehearing Northern disclaims the position of contending that our gas statute G. S. 1959 Supp. 55-703 does not require ratable production of gas from a common source. It says the question is whether the statute also requires ratable purchases of gas. It then warns the court not to invade the jurisdiction of the Federal Power Commission by dealing with purchasers, citing *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 74 S. Ct. 794, 98 L.Ed. 1035; *Natural Gas Co.* v. *Panoma Corp.*, 349 U.S. 44, 99 L. Ed. 866, 75 S. Ct. 576; *Deep South Oil Co. of Texas* v. *Federal Power Com'n.*, 247 F. 2d 882; *Saturn Oil & Gas Company* v. *Federal Power Com'n.*, 250 F. 2d 61, cert. denied 355 U.S. 956, 2 L.Ed. 2d 532, 78 S. Ct. 542; *Cities Service Gas Co.* v. *State Corporation Commission*, 180 Kan. 454, 304 P. 2d 528, reversed 355 U. S. 391, 2 L. Ed. 2d 355, 78 S. Ct. 381; and *Cities Service Gas Co.* v. *State Corporation Commission*, 184 Kan. 540, 337 P. 2d 640.

We had read those cases before the opinion in this case was announced, and we believe those cases all dealt with the question of the power to regulate the price of gas. As we tried to point out in the opinion as filed, this case in no way involves the price of gas. Northern studiously avoids that fact. Moreover, the ratable taking order does not regulate the total amount of gas which Northern may take. We fail to see how the order affects interstate commerce in any way.

Northern magnanimously states that the state may control the ratable production of natural gas, but fails to inform us how this can be done unless the producer can find a "taker" for his gas.

It is not important in this case that the purchaser has a contract to purchase the gas at a price, which we will assume is subject to the regulation and jurisdiction of the Federal Power Commission, but the only important matter [fol. 183] is that the "taker" take gas so that it may be produced. This case involves nothing to our knowledge which has anything to do with the price paid by the purchaser for gas, nor how much gas he buys. The only matter here involved is whether the taker must take ratably from all wells to which he is connected and thus preserve the rights of the land owners.[1] We again refer to the statement of Professor Summers of the University of Oklahoma School of Law set out in the original opinion to show that ratable production cannot be accomplished unless the taker will take gas ratably.

Northern has in this case cast some reflection upon the increase of allowables in 1958 by the Kansas Commission. The record contains no facts concerning this action of the Commission. But we must assume that the Commission believed that the market was sufficient to warrant the increase. Moreover, if we are justified in taking judicial notice of facts, we must also assume that the Kansas allowables were not greater than the Oklahoma allowables. And

[1] Reference might again be made to that part of G.S. 1959 Supp. 55-703 which is quoted in the original opinion and to the discussion in the late case of *Rayl* v. *Monsanto Chemical Co.*, 187 Kan. 158, p. 170, 354 P.2d 3[illegible], relating to the proration and ratable taking as to oil.

we notice that it was generally thought to be a fact that drainage of gas was occurring from the Kansas Hugoton field to that part of the field in Oklahoma.

Thus, in 1958, the Commission may have been, in a round about way, endeavoring to set up ratable taking as between Kansas wells and Oklahoma wells by increasing the allowables of the Kansas wells.

Of course, none of this is involved in the record of the case before us. However, we may direct attention to the news story on page 54, in *Newsweek* for July 10, 1961, entitled *Natural Gas: Two Straws*. It is there noted that the Hugoton field covers some 4.1 million acres in Kansas, Oklahoma and Texas; that most of the estimated 300 trillion cubic feet of gas in the field lies under Kansas soil, but that Oklahoma supplies the major share of the 2 million cubic feet pumped daily northward through the pipe lines.

The motion for rehearing is denied.

[fol. 184] Schroeder, J., is of the opinion the judgment of the trial court should be reversed, and therefore dissents.

[fol. 185]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,128

NORTHERN NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—November 17, 1961

I.

Notice is hereby given that Northern Natural Gas Company, a Corporation, the appellant above named,

hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Kansas, the highest court of such state, affirming the judgment of the District Court of Finney County, Kansas, upholding and sustaining the validity of an order issued by the Corporation Commission of the State of Kansas directing appellant to take gas ratably from all wells to which it is connected in the Kansas-Hugoton Gas Field, which judgment was entered in this action on the 10th day of June, 1961, and became final on the 31st day of August, 1961, by that Court's opinion denying appellant's motion for rehearing.

This appeal is taken pursuant to 28 U.S.C.A. 1257(2), [fol. 186] 62 Stat. 929.

II.

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Abstract of record as prepared and filed by appellant, including any Appendix thereto, together with the proof of service thereof;

B. Counter abstract of record as prepared and filed by appellee, including any Appendix thereto, together with the proof of service thereof;

C. Opinion, decision and judgment of the Supreme Court of Kansas entered June 10, 1961, including the dissenting opinion of Mr. Justice Schroeder;

D. Appellant's motion for rehearing as filed, together with proof of service thereof;

E. Opinion, decision, and judgment of the Supreme Court of Kansas entered August 31, 1961, denying appellant's motion for rehearing, including dissenting opinion; and

F. This notice of appeal, together with proof of service thereof.

III.

The following Federal question is presented by this appeal:

Does the State of Kansas have jurisdiction, under the guise of regulating production and in the face of the provisions of the Natural Gas Act and Federal Power Commission regulations thereunder, to control the sale of natural gas in interstate commerce for resale after the production and gathering thereof has ended, by directing a natural gas company purchaser, operating under subsisting gas sales contracts with its producers, to make its purchases in a manner or at a rate contrary to such con- [fol. 187] tracts which are on file with the Federal Power Commission as effective rate schedules and on which Certificates of Public Convenience and Necessity authorizing such sales have been issued?

Dated this 17th day of November, 1961.

Mark H. Adams,* Mark H. Adams, II, Joe Rolston, 503 Colorado Derby Building, Wichita, Kansas; Lawrence I. Shaw, F. Vinson Roach, Jack C. Osborne, Patrick J. McCarthy, 2223 Dodge Street, Omaha, Nebraska, Attorneys for Appellant, Northern Natural Gas Company.

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* Attorney upon whom service should be made.

Acknowledgment of Service (omitted in printing).

[fol. 188] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 189]

SUPREME COURT OF THE UNITED STATES

No. 659, October Term, 1961

NORTHERN NATURAL GAS COMPANY, Appellant,

vs,

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS.

Appeal from the Supreme Court of the State of Kansas.

ORDER NOTING PROBABLE JURISDICTION—May 28, 1962

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Frankfurter and Mr. Justice White took no part in the consideration or decision of this case.